

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

DOCKETED 1911

No. 11133

CAPTAIN JOHN J. MARTIN, PETITIONER,
VERSUS
CHARLES E. JOHNSON, & A. CHRISTOPHER,
DEFENDANTS.
HARRIS.

(21,601.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 194.

CAPTAIN JOHN I. MARTIN, SUDDEN & CHRISTENSON,
CHARLES E. SUDDEN, E. A. CHRISTENSON, ROBERT
SUDDEN, AND JOHN H. SUDDEN, PLAINTIFFS IN
ERROR,

vs.

A. J. WEST.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

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7004.

Filed Sep. 28, 1907. C. S. Reinhart, Clerk.

In the Superior Court of the State of Washington for Chehalis
County.

No. 6330.

A. J. WEST, Plaintiff,

vs.

Capt. JOHN I. MARTIN et al., Defendant.

Transcript.

Filed Aug. 14, 1907. W. C. Birdwell, Clerk. A. E. Graham,
Deputy.

3 In the Superior Court, State of Washington, for Chehalis
County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A.
Christensen, Ed. Hulbert, John Doe Sudden, John Doe, and
Richard Roe, Defendants.

Complaint.

The plaintiff in the above entitled action complains of the defend-
ants and for a cause of action alleges:

I.

That the steamer Norwood is an enrolled vessel of about 350 tons burden and is now situated, lying and being at the wharf of the Aberdeen Lumber & Shingle Co. at Aberdeen, in Chehalis County, Washington and within the jurisdiction of this honorable court; that the defendants Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Captain Martin, Ed Hulbert, John Doe Sudden (Christian name unknown), John Doe and Richard Roe (the true names of said last two defendants being unknown to the plaintiff) are the owners of the said steamer Norwood and that the defendant, Sudden & Christenson, is the managing owner of said steamer Norwood and was such managing owner at the times hereinafter mentioned that the defendant Captain Martin is and was during the times herein mentioned, the master of said steamer Norwood and has said steamer Norwood in his possession and under his control at Aberdeen, Washington, as aforesaid.

II.

That on the 7th day of May, 1906, the plaintiff herein was the owner of a certain steel or combination steel and wood, draw bridge together with the approaches belonging to the same, said bridge extending across the Chehalis river from South Aberdeen to Aberdeen proper in Chehalis County, Washington, said bridge being used by the plaintiff as a toll bridge for the passage of passengers,
4 street cars, teams and vehicles from whom and from which tolls were collected by the plaintiff; that said bridge had been erected and was maintained and operated by the plaintiff at said point for some months prior to said date and that the erection of said bridge was affirmatively authorized by the Honorable Secretary of War of the United States and the same constituted and was a lawful structure in said stream; that said draw bridge was provided with a large swinging span capable of being opened by revolving the same upon a central pier or piers constructed in the channel of said river so that when said bridge was open it afforded two passage ways of about 125 feet each on each of said central pier- for the passage of vessels, steamers and other crafts up and down the said Chehalis river; that said bridge was of great value and was the source of a revenue to the plaintiff amounting to from \$800.00 to \$1000.00 per month.

III.

That on the said 7th day of May, 1906, the defendants were engaged in operating the said steamer Norwood, together with her boiler-, engines, tackle, apparel and furniture in the vicinity of the plaintiff's said bridge, said steamer Norwood being under her own steam and motive power and being in the possession of and under the control and command of the defendant Martin and that on said date while the defendants were engaged in passing their vessel through the draw of said bridge the defendants negligently, carelessly and through failure to exercise ordinary skill in the handling management and navigation of said vessel ran said vessel against the supporting piers of one of the spans of plaintiff's said bridge and thereby through the carelessness and negligence of the defendants, struck, broke and injured the piers supporting the plaintiff's said bridge to such an extent that within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the said Chehalis River and was broken up and almost utterly destroyed.

5

IV.

That because of said injury to the plaintiff's said bridge the plaintiff will be put to great expense to repair the same and the plaintiff will be thrown out of the use of said bridge for a long period of time, and will lose the profits thereof and that plaintiff has been damaged by reason of the premises in the sum of \$15,000.00.

V.

That because of the premises the plaintiff has a lien on the said steamer Norwood, her boilers, engines, tackles, apparel, and furniture

for the amount of the said damages, to-wit, the sum of \$15,000.00, together with the costs of this action and plaintiff claims a lien under the statutes and laws of the state of Washington in such cases made and provided.

VI.

That plaintiff is informed and believes that all of the defendants in this action are non-residents of the state of Washington and also that said defendants are at the present time absent from the state of Washington, except the defendant Martin, master of said vessel and Ed. Hulbert, who is now at Aberdeen, Washington and that said vessel is at the present time engaged in loading a cargo of lumber at Aberdeen, Washington, preparatory to departing with the same for some port in the State of California and that the defendants are preparing to take said vessel out of the state of Washington and out of the jurisdiction of this court and will so do unless restrained by order of this court.

VII.

That a proper case exists for the appointment of a receiver of said vessel, her engines, boilers, tackle, apparel and furniture for the purpose of taking possession of said vessel and caring for the same and holding and keeping the same within the jurisdiction of this court to abide the result of this action and that without the
6 appointment of such receiver for said vessel, plaintiff fears and has good reason to fear that the defendant, Martin, master of said vessel would take said vessel out of the jurisdiction of this court.

VIII.

That said vessel will be loaded and prepared for sea within the next 24 hours and will leave said State of Washington within said time and time does not exist for the giving of notice of application for a temporary restraining order herein or to give notice of an application for the appointment of a temporary receiver herein and plaintiff believes and has reason to believe that if notice of such application were given to the defendants they would immediately and before the court could act upon the same, withdraw said vessel from the jurisdiction of this court and that an emergency exists for the granting of a temporary restraining order and of the appointment of a temporary receiver without notice.

Wherefore the plaintiff prays that a temporary restraining order and order to show cause be issued herein requiring the defendants to show cause at a time to be fixed by the court, why a temporary injunction should not be granted restraining the defendants from removing said vessel her boilers, engines, tackle, apparel and furniture out of the jurisdiction of this court or out of the State of Washington during the pendency of this action and that in the meantime defendants and each of them and their servants, agents and employees be enjoined and restrained from removing said vessel from Aberdeen, Washington and that an order be made herein requiring the defendants to show cause at a date set, why a receiver should not be ap-

pointed by this court to take possession of said vessel during the pendency of this action and pending a hearing of such order to show cause that a temporary receiver be appointed by this court to take and hold possession of said vessel and her equipment; that upon the final hearing in this cause that the plaintiff be adjudged to have a lien upon the said vessel, her boilers, engines, tackle, apparel and

7 furniture for the amount of his said damages, to-wit for the sum of \$15,000.00 and the costs of this action, and that the said vessel, her engines, boilers, tackle, apparel and furniture be sold under the order and decree of this court and that the proceeds arising from such sale after deducting the costs and expenses thereof, be applied as far as necessary to the satisfaction of the plaintiff's said lien and that the defendants be adjudged to be personally liable to the plaintiff for the amount of the plaintiff's said damages and costs and that the plaintiff have personal judgment against the defendants and each of them for the amount of any deficiency remaining after said sale, and that such other and further relief be granted as to the court may seem just.

JOHN C. HOGAN,
Attorney for Plaintiff.

STATE OF WASHINGTON,
County of Chehalis, ss:

John C. Hogan, being first duly sworn, on oath says, that he is the attorney for the plaintiff in the above entitled action and makes this verification in plaintiff's behalf for the reason that the plaintiff is not now within the state of Washington to verify the same; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

JOHN C. HOGAN.

Subscribed and sworn to before me this 9th day of May, 1906.

F. E. JONES.

*Notary Public in and for said State,
Residing at Aberdeen, Washington.*

Filed May 9, 1906.

W. C. BIRDWELL, *Clerk.*
A. E. GRAHAM, *Deputy.*

8 In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe, and Richard Roe, Defendants.

Affidavit.

STATE OF WASHINGTON,
County of Chehalis, ss:

John C. Hogan, being first duly sworn, on oath says; that he makes this affidavit for and on behalf of the plaintiff in the above entitled action in support of the application of a receiver of the steamer Norwood, her tackle, engines, boilers, apparel and furniture; that he has read the complaint herein, is familiar with the contents thereof and he hereby adopts said complaint as his affidavit as fully as if set out herein; that the said steamer Norwood is advertised to sail for California on Thursday the 10th day of May, 1906, and that affiant believes that an emergency exists for the appointment of a temporary receiver to take possession of said vessel; that if said vessel is permitted to go outside the jurisdiction of this court the plaintiff herein will lose his lien upon the said vessel, as affiant believes.

JOHN C. HOGAN.

Subscribed and sworn to before me this 9th day of May, 1906.

F. E. JONES,

*Notary Public in and for said State,
Residing at Aberdeen, Wash.*

Filed May 9, 1906.

W. C. BIRDWELL, *Clerk.*

A. F. GRAHAM, *Deputy.*

9 In the Superior Court, State of Washington, for Thurston County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe, & Richard Roe, Defendants.

Order to Show Cause and Appointing a Receiver.

The above entitled action coming on to be heard upon the application of the plaintiff for the appointment of a receiver for the steamer Norwood, her tackle, apparel, furniture, boilers and engines, and after hearing and considering said application ex parte the court

being advised in the premises, it is ordered that the defendants in the above entitled action be and they hereby are required to show cause before this court at the court house in the City of Montesano, in said county on the 12th day of May, 1906, at the hour of 10:30 o'clock A. M. of said day, why a receiver should not be appointed for the steamer Norwood, her boilers, engines, tackle, apparel and furniture.

And it appearing to the court that an emergency exists for the appointment of a temporary receiver pending a hearing upon the plaintiff's said application for a receiver, it is therefore further ordered that Ed. Payette of Montesano be and he hereby is appointed temporary receiver of this court to take immediate possession of the said steamer Norwood, her boilers, engines, tackle, apparel and furniture and that he will hold and safely keep the same within the jurisdiction of this court and subject to the orders of this court until a hearing can be had upon the application for a receiver herein.

It is further ordered that the bond of said temporary receiver be and the same is hereby fixed at the sum of Five Thousand (\$5000.00) Dollars to be conditioned for the faithful discharge of his duties as such receiver as provided by law.

10 It is further ordered that notice of this order be given to the defendants by serving upon the defendants Martin and the defendant Hulbert each a copy of this order together with the complaint and affidavit, as well as upon any such of the other defendants as can be found within Chehalis County, and that such service be made not later than May 9th, 1906, before the time set herein for said hearing.

Dated this 9th day of May, 1906.

MASON IRWIN, *Judge.*

Filed May 9, 1906, and entered on Page 514 of Journal No. 22.

W. C. BIRDWELL, *Clerk,*

By A. E. GRAHAM,

Deputy Clerk.

11 In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Ed Hulbert, John Doe Sudden, John Doe, & Richard Roe, Defendants.

Motion.

Now comes the plaintiff herein and moves the court for an order requiring the defendants to show cause at a time to be fixed by the court why a receiver should not be appointed for the property described in the complaint herein. to-wit, the steamer Norwood her boilers, engines, tackle, apparel and furniture and that pending hear-

on the said order to show cause, a temporary receiver be appointed by this court for the said property.

JOHN C. HOGAN,
Attorney for Plaintiff.

May 9, 1906.

W. C. BIRDWELL, *Clerk.*
A. E. GRAHAM, *Deputy.*

In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,
vs.

JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. CHRISTENSON, Ed. Hulbert, John Doe Sudden, John Doe, and Richard Roe, Defendants.

Oath of Office of Receiver.

STATE OF WASHINGTON,
County of Chehalis, ss:

Ed. Payette, being first duly sworn, on oath says; that he will fully perform the duties of receiver in the above entitled action and that he will support the constitution and laws of the state of Washington and of the United States.

ED. PAYETTE.

Subscribed and sworn to before me this 9th day of May, 1906.

JOHN C. HOGAN,
*Notary Public in and for said State,
Residing at Aberdeen, Wash.*

May 9, 1906.

W. C. BIRDWELL, *Clerk*
A. E. GRAHAM, *Deputy.*

In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,
vs.

JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. CHRISTENSON, Ed. Hulbert, John Doe Sudden, John Doe, and Richard Roe, Defendants.

Bond of Temporary Receiver.

Now all men by these presents that we, Ed. Payette and principal John G. Lewis, as sureties, are held and firmly bound unto the defendants Captain Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe and Richard Roe,

Richard Roe in the penal sum of Five Thousand (\$5000.00) Dollars for the payment of which well and truly to be made we bind ourselves and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents;

The condition of the foregoing obligation is such that whereas, the above bounden principal has been appointed by the above named court as temporary receiver of said court in the above entitled action to take possession of and hold said property.

Now, therefore, if the above bounden principal shall faithfully discharge the duties of receiver in said action and shall well and truly obey the orders of the court, then this obligation to be void, otherwise of force.

Dated May 9, 1906.

ED. PAYETTE.
JOHN G. LEWIS.

14 STATE OF WASHINGTON,
County of Chehalis, ss:

John G. Lewis, being first duly sworn, on oath says; that he is the surities named on the foregoing bond; that he is a resident of Chehalis County, Washington and is worth the sum of Ten Thousand (\$10,000.00) Dollars, is his separate property situated within this state over and above all his just debts, liabilities and property exempt from execution.

JOHN G. LEWIS.

Subscribed and sworn to before me this 9th day of May, 1906.

JOHN C. HOGAN,
*Notary Public in and for said State,
Residing at Aberdeen, Wash.*

Approved May 9th, 1906.

MASON IRWIN, *Judge.*

Filed May 9, 1906, and entered on page 514 of Journal No. 22.

W. C. BIRDWELL, *Clerk,*
By A. E. GRAHAM,
Deputy Clerk.

15 In the Superior Court of the State of Washington in and for
Chehalis County.

A. J. WEST, Plaintiff,

vs.

Capt. JOHN I. MARTIN et al., Defendants.

Order Discharging Receiver.

An order having been made by me in this proceeding on the 9th day of May, 1906, on the application of A. J. West, plaintiff herein, against the vessel Norwood, her tackle, apparel and furniture, ap-

...nting Ed. Payette, receiver thereof and the said vessel having
 en seized by the said receiver by virtue of the said order and the
 defendants, herein, the owners of the said vessel, having applied to
 e upon due notice to the said plaintiff, the lien claimant herein,
 r an order discharging the said vessel from the said receivership,
 d the plaintiff appearing by his attorney and consenting to the
 der and the said defendants and owners having on this the 10th
 y of May, 1906, executed and delivered to the said plaintiff, A. J.
 est, a good and sufficient undertaking or bond conditioned for the
 yment of all claims and damages which shall be established due
 the said plaintiff in this action;

Now, therefore, in consideration of the premises and on motion
 J. C. Cross, attorney for the said owners, it is ordered that said
 nd be accepted and the security thereof substituted for said vessel
 d that the order heretofore made appointing the said receiver be
 d the same is hereby vacated and set aside and the receiver is
 charged.

Done in open court this the 10th day of May, 1906.

MASON IRWIN, *Judge.*

Filed May 10, 1906, and entered on page 516 of Journal No. 22.

W. C. BIRDWELL, *Clerk,*
 By A. E. GRAHAM,
Deputy Clerk.

In the Superior Court, State of Washington, Chehalis County.

A. J. WEST, Pl'ff,
 vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A.
 Christenson, John Doe Sudden, John Doe and Richard Roe,
 Def'ts.

Notice of Appearance.

to the above named Plaintiffs:

Take notice that the undersigned hereby appears for the defend-
 ants, Capt. Martin whose true name is John I. Martin, Sudden &
 Christenson, Chas. E. Sudden, E. A. Christenson, John Doe Sudden
 whose true name is Robert Sudden, Ed. Hulbert and John Sudden.

J. C. CROSS.

Served May 10th, 1906.

JOHN C. HOGAN,
Att'y for Pl't'ff.

Filed May 10, 1906.

W. C. BIRDWELL, *Clerk.*
 A. E. GRAHAM, *Deputy.*

17 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, A. E. Christenson, Robert Sudden, Edward Hulbert, John Doe Sudden, John Doe, & Richard Roe, Defendants.

Undertaking of Owners on Application to Discharge Receiver and Relieve Vessel from Lien.

Know All Men by these Presents That Capt. John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, John Doe Sudden, Robert Sudden, Edward Hulbert as principals, and John Lindstrom as surety, are held and firmly bound unto A. J. West, in the penal sum of \$30,000, for the payment of which sum well and truly to be made the said principals and the said surety are held and firmly bound, jointly and severally, by these presents.

Dated this the 10th day of May, 1906.

The conditions of this obligation are such that whereas upon the complaint of the said A. J. West, claiming a lien against the Steamer Norwood, her tackle, apparel, and furniture, boilers and engines, an order was made by the said Superior Court appointing a temporary receiver for the said vessel, and whereas,

The said receiver Ed Payette pursuant to such order has taken possession of the said vessel and whereas the owners of the said vessel are desirous of procuring a release of the said vessel from the said lien and from the said receiver.

Now, therefore, if the said bounden principals shall well and truly pay to the said A. J. West any judgment or claim which he may establish upon the said cause of action mentioned in his complaint herein, and shall well and truly discharge and perform any judgment or order which the said Court may make in said cause, and shall well and truly abide by and perform any order or judgment which the said court may make or render in this cause in favor of the said plaintiff, A. J. West, then this obligation to be void, otherwise to be and remain in full force and effect.

It being one of the conditions of this obligation that the personal liability of the principals and surety herein shall be and become and is substituted for any security or claim which the said plaintiff, A. J. West; may have against or in the said vessel, Steamer Norwood, aforesaid, her tackle, apparel, furniture, engines, boilers, etc.

CAPTAIN JOHN I. MARTIN.
SUDDEN & CHRISTENSON.
CHAS. E. SUDDEN.
E. A. CHRISTENSON.
ROBERT SUDDEN,

By CAPT. JOHN I. MARTIN.

EDWARD HULBERT.
JOHN LINDSTROM.

8 STATE OF WASHINGTON,
County of Chehalis, ss:

John Lindstrom being first duly sworn upon *their* oaths depose and say- *each for himself and not one for another*: that he is one of the sureties named in the foregoing bond; that he is worth the amount of the penalty designated in the said bond over and above all his legal exemptions, just debts and liabilities in property situated in the State of Washington and within the jurisdiction of this Court.

JOHN LINDSTROM.

Subscribed and sworn to before me this the 10th day of May, 1906.

[SEAL.]

F. E. JONES,
Notary Public in and for the State of
Washington, Residing at Aberdeen.

The above and foregoing bond approved this the 10th day of May, 1906.

MASON IRWIN, Judge.

Filed May 10, 1906, and entered on page 515 of Journal No. 22.

W. C. BIRDWELL, Clerk,
By A. E. GRAHAM,
Deputy Clerk.

In the Superior Court of the State of Washington in and for
Chehalis County.

A. J. WEST, Plaintiff,
vs.

Capt. JOHN I. MARTIN et al., Defendants.

Notice of Application to Discharge Receiver.

To the above named Plaintiff, A. J. West, and to John C. Hogan, Esq., his attorney of record herein:

You will please take notice that an application will be made by John I. Martin, Captain of the Steamer Norwood for and on behalf of the owners of the said vessel to the Honorable Mason Irwin, Judge of the said Superior Court at the chambers of the said Court in the City of Montesano, Chehalis County, Washington on the 10th day of May, 1906, at the hour of 10:30 o'clock in the forenoon of that day as soon thereafter as counsel can be heard, for an order discharging the receiver appointed in this proceeding on the 9th day of May, 1906, upon the application of the said A. J. West, plaintiff herein, and upon the execution, approval and delivery to the said applicant plaintiff, A. J. West, of an undertaking in the penal sum of

\$30,000.00, conditioned as by law in such cases made and provided, and for such other and further relief as may be just.

CAPT. JOHN I. MARTIN,
*Acting for and on Behalf of the
Owners of the Steamer Norwood.*

J. C. CROSS,
Attorney for Owners of Steamer Norwood.

Filed May 10, 1906.

W. C. BIRDWELL, *Clerk.*
E. A. GRAHAM, *Deputy.*

20 In the Superior Court, State of Washington, for Chehalis
County.

A. J. WEST

VS.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A.
Christenson, Ed. Hulbert, John Doe Sudden, John Doe & Richard
Roe, Defendants.

To the Honorable Superior Court of Chehalis County:

Your temporary receiver heretofore appointed by the court, respectfully reports as follows:

That on the 9th day of May, 1906, after having given bond, and taking the oath prescribed by law, he took possession of the steamer Norwood, her boiler, engines, tackle, apparel and furniture and that on the following day, to-wit:—May 10th, 1906, by order of this court, he released said property and surrendered the possession thereof to the defendants in this action.

That this receiver employed a keeper at an expense of \$5.00 for wages, and that \$15.00 would be a reasonable sum to be allowed this receiver for his said services.

Wherefore he prays that the court may make an order herein, allowing him \$20.00.

Dated May 14th, 1906.

ED. PAYETTE,
Temporary Receiver.

STATE OF WASHINGTON,
County of Chehalis, ss:

Ed Payette being first duly sworn upon oath says that he has read the foregoing petition, knows the contents thereof and believes the same to be true.

ED. PAYETTE.

Subscribed and sworn to before me this 14th day of May, 1906.

JOHN C. HOGAN,
*Notary Public in and for said State,
Residing at Aberdeen, Washington.*

21 In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe & Richard Roe, Defendants.

Order to Show Cause and Appointing a Receiver.

The above entitled action coming on to be heard upon the application of the plaintiff for the appointment of a receiver for the steamer Norwood, her tackle, apparel, furniture, boilers, and engines, and after hearing and considering said application ex parte, the court being advised in the premises, it is ordered that the defendants in the above entitled action be and they hereby are required to show cause before this court at the court house in the city of Montesano in said county on the 12th day of May, 1906, at the hour of 10:30 o'clock A. M. of said day, why a receiver should not be appointed for the steamer Norwood, her boilers, engines, tackle, apparel and furniture.

And it appearing to the court that an emergency exists for the appointment of a temporary receiver pending a hearing upon the plaintiff's said application for a receiver, it is therefore further ordered that Ed Payette of Montesano be and he hereby is appointed temporary receiver of this court to take immediate possession of the said steamer Norwood, her boilers, engines, tackle, apparel and furniture and that he will hold and safely keep the same within the jurisdiction of this court and subject to the orders of this court until a hearing can be had upon the application for a receiver herein.

22 It is further ordered that the bond of said temporary receiver be and the same is hereby fixed at the sum of Five Thousand (\$5000.00) Dollars to be conditioned for the faithful discharge of his duties as such receiver as provided by law.

It is further ordered that notice of this order be given to the defendants be serving upon the defendants Martin and the defendant Hulbert each a copy of this order together with the complaint and affidavits as well as upon any such of the other defendants as can be found within Chehalis County, and that such service be made not later than May 9th, 1906, before the time set herein for said hearing.

Dated this 9th day of May, 1906.

MASON IRWIN, Judge.

STATE OF WASHINGTON,
County of Chehalis, ss:

I, W. C. Birdwell, County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for Chehalis County, do hereby certify that the above and foregoing is a full, true and correct copy of the Order of the Court made and entered in the above

and foregoing entitled matter on this day and date, as the same appears of record in my office.

In testimony Whereof, I have hereunto set my hand and seal of said court, this 9th day of May, 1906.

[SEAL.]

W. C. BIRDWELL, *Clerk*,
By A. E. GRAHAM,
Deputy Clerk.

Filed May 14, 1906.

W. C. BIRDWELL, *Clerk*,
By A. E. GRAHAM, *Deputy*.

23 In the Superior Court of the State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,
vs.
Capt. MARTIN et al., Defendants.

Order on Motion.

This cause coming on for hearing on the report of Ed Payette temporary receiver and asking for an allowance of \$20.00 for his costs and services and the court being fully advised in the premises, it is ordered that said report be and the same is hereby approved and the said Ed Payette is allowed \$20.00 for his costs and services.

Done in open court this 14th day of May, 1906.

MASON IRWIN, *Judge*.

Filed May 14, 1906, and entered on page 521 of Journal No. 22.

W. C. BIRDWELL, *Clerk*,
By A. E. GRAHAM,
Deputy Clerk.

24 In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,
vs.
Captain JOHN I. MARTIN et al., Defendants.

Demurrer.

Come now the above named defendants and for their demurrer to the complaint of plaintiffs herein, allege:

I. That the court has no jurisdiction over the subject matter of the action.

II. That the complaint does not state facts sufficient to constitute a cause of action.

Wherefore, defendants pray judgment of the said complaint and that they go hence without day and with their costs.

J. C. CROSS,
Attorney for Defendants.

Filed May 29, 1906.

W. C. BIRDWELL, *Clerk*,
A. E. GRAHAM, *Deputy*.

25 In the Superior Court of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Notice of Hearing.

To the above named Plaintiff and to John C. Hogan, the attorney of record herein:

You and each of you will take notice that at the Court House in the City of Montesano, County of Chehalis, State of Washington, on the 27th day of August, 1906, at the hour of Ten O'clock A. M. of that day or as soon thereafter as counsel can be heard, the above named defendant will call up for hearing and determination by the Court, the demurrer made and served herein.

J. C. CROSS,
Attorney for Def'ts.

Filed Aug. 22, 1906.

W. C. BIRDWELL, *Clerk*.

26 In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Order.

The above entitled cause coming on regularly to be heard upon the demurrer of the defendants to the complaint of the plaintiff herein, and the same having been argued by counsel and the court being fully advised in the premises,

It is ordered that the said demurrer be and the same is hereby overruled. Defendants given ten days in which to answer.

Dated this 31st day of August, 1906.

MASON IRWIN, *Judge*.

O. K. as to form.

J. C. CROSS.

Filed August 31st, 1906, and entered on page 4 of Journal No. 23.

W. C. BIRDWELL, *Clerk*.

- 27 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,
vs.
JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys that the defendants in the said action shall have until September, 15th, 1906, in which to make and serve their answer herein.

Signed in Duplicate.

J. C. CROSS,
Of Attorneys for Defendants.
JOHN C. HOGAN,
Attorney for Plaintiffs.

Filed Sep. 15, 1906.

W. C. BIRDWELL, *Clerk.*
A. E. GRAHAM, *Deputy.*

- 28 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,
vs.
Captain JOHN I. MARTIN et al., Defendants.

Separate Answers of Ed. Hulbert.

Comes now the above named defendant Ed. Hulbert, and for his separate answer to the complaint of plaintiff made and served herein alleges:

I.

That he denies he is one of the owners of the Steamer Norwood, mentioned in said complaint; he denies that at the time of the service of the said complaint he had any interest in the said Steamer Norwood; he denies that since the service of the said Summons and Complaint he has become or now is interested in said Steamer Norwood; he denies that during the times mentioned in the complaint he was, since has been or now is, interested in the said Steamer Norwood in any manner or form whatsoever.

2.

And this answering defendant alleges that he disclaims any interest in law or in equity in and to the said Steamer Norwood.

3.

And for further answer to the said allegations of the said complaint, this answering defendant alleges, that he disclaims having had or as now having any interest or property whatsoever in the said Steamer Norwood, and denied any and all liability in this action as owner, manager or otherwise of the said Steamer.

Wherefore this answering defendant prays that he go hence without day and with his costs.

J. C. CROSS,

Attorney for Defendant, Ed. Hulbert.

Filed Sep. 27, 1906.

W. C. BIRDWELL, *Clerk.*

20 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, and CHARLES E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Separate Answer of John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, John Sudden, and Robert Sudden.

Come now defendants, John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, John Sudden and Robert Sudden, and without waiving their demurrer herein and still insisting upon their rights as claimed under such demurrer, for their joint and several answer to the complaint of plaintiff made and filed herein, admit, deny and allege as follows:

I.

20 In answering the allegations embraced in Paragraph "I" of plaintiff's complaint, they admit that the Steamer Norwood is an enrolled vessel; they admit that the said vessel is of about Seven Hundred and Sixty tons gross burden or about Five Hundred tons net burden; they admit that at the time of the commencement of this action the Steamer Norwood was lying at the wharf of the Aberdeen Lumber & Shingle Company's in the Chehalis River at Aberdeen, Chehalis County, Washington; they admit that Sudden & Christenson of San Francisco, California, are the managing owners of the said Steamer Norwood; they admit that John I. Martin at the times mentioned in the complaint was and is the Captain and Master of the said steamer and as such was in the possession and control of the said vessel at the time stated in said complaint; but each and every other allegation, matter and thing in said Paragraph "I" contained, and not herein specifically admitted, these answering defendants deny.

II.

Answering unto the allegations embraced in Paragraph "II" plaintiff's complaint these answering defendants admit that the bridge referred to in said complaint was composed of wood, and iron; they admit that the said bridge was a toll bridge with approaches on each side of the draw of said bridge; they admit that the said bridge was used as a toll bridge for the passage of passenger street cars, teams and vehicles from whom and for which, tolls were collected for passage over said bridge; they admit that the bridge had been erected and operated for some time prior to the 7th day of May, 1906; they admit that the bridge was provided with a swinging span capable of being opened by revolving the same upon a central pier constructed at or near the middle of the Chehalis River; they admit that when the bridge was swung open it afforded passage-ways upon each side of the swinging span for the passage of vessels up and down the Chehalis River; but these defendants say that they are not informed, except from the complaint of plaintiff whether the said plaintiff was on the 7th day of May, 1906, or since has been the owner of the said bridge and therefore these answering defendants do not admit the same but insist that the said plaintiff shall be required to prove his allegation of ownership; but each and every other allegation, matter and thing in said paragraph "II" contained and not specifically admitted, these defendants deny.

III.

Answering unto the allegations of Paragraph "III" of plaintiff's complaint these answering defendants admit that on the 7th day of May, 1906, the defendant, Captain Martin, Master of the said vessel was engaged in conducting the said Steamer Norwood together with her boilers, engines, tackle, apparel and furniture on the waters of Grays Harbor and of the Chehalis River and that he was required to and did conduct the said vessel through the opening of the said bridge made by the said draw span; they admit that except 31 as affected by the wind and tides the said steamer was operated and by virtue of her own motor power or steam; but each and every other allegation, matter and thing in said Paragraph "III" contained and not herein specifically admitted, these answering defendants deny.

IV.

Answering the allegations contained in Paragraph "IV" of plaintiff's complaint these defendants deny said allegations and each and every of said allegations in said Paragraph "IV" contained.

V.

Defendants deny each and every allegations contained in paragraph "V" of plaintiff's complaint and the whole thereof.

VI.

These answering defendants for their answer to the allegations contained in Paragraph "VI" of plaintiff's complaint, admit that

at the time of the commencement of this action they were, and that since the commencement of said action they have been and now are non-residents of the State of Washington; they admit that at the time of the commencement of this action the Master of the said vessel was engaged in loading the said vessel, with lumber, at the wharf of the Aberdeen Lumber & Shingle Company, in the waters of the Chehalis River in said County, preparatory to the carrying of such cargo out of the State of Washington coastwise and to the State of California.

VII.

These answering defendants deny each and every allegation, matter and thing contained in Paragraph "VII" of plaintiff's complaint.

VIII.

Defendants for their answer to the allegations contained in Paragraph "VIII" of plaintiff's complaint, admit that but for the intervention of this Court the said Steamer Norwood would have operated from the State of Washington and City of Aberdeen, Chehalis County, with her cargo on the 10th day of May, 1906, coast-
32 wise to the state of California as hereinbefore stated; but each and every other allegation, matter and thing contained in Paragraph "VIII" and not herein expressly admitted, these defendants deny.

And for further answer and for their first affirmative defense herein, these defendants allege:

First. That during all the times herein mentioned and at the present time the plaintiff herein has been and is a citizen and resident of the City of Aberdeen, Chehalis County, Washington, claiming to own and operate a toll bridge across the Chehalis River, between Aberdeen proper and South Aberdeen, in Chehalis County, Washington.

Second. That during all the times herein mentioned and at the present time the defendants herein have been and are citizens and residents of the City and County of San Francisco and State of California.

Third. That during all the times herein mentioned and at the present time the Steamer Norwood has been and is an ocean-going vessel registered at San Francisco in the State of California under the navigation laws of the United States, with the name "Norwood" painted on her bow and stern, and employed by her owners upon the Pacific Coast between the City of San Francisco in the State of California and points in the State of Washington and particularly points on Grays Harbor in the said last named State, as a common carrier for hire.

Fourth. That during all the times herein mentioned the Chehalis River has been and now is a public navigable stream flowing into Grays Harbor, and thence into the Pacific Ocean upon which commerce is carried in steam and sailing vessels to and from points on said river in the State of Washington to and from points in other States and foreign countries, and has been and now is a navigable stream for all commercial purposes, in which, for a number of miles

inland the tides ebb and flow and is free and open for all the citizens of the United States who are entitled to navigate the same by sailing and steam vessels and otherwise without impediment or obstruction; that Grays Harbor is an arm of the sea or the Pacific Ocean in which the tides ebb and flow and is navigable for all commercial purposes by sailing or steam vessels or otherwise, the full length of the Harbor and for a distance of about eighteen miles from the said Pacific Ocean inland; that the City of Aberdeen, in Chehalis County, Washington, is situated on the Northerly shore of the said River and Harbor and South Aberdeen in Chehalis County is situated on the Southerly shore of the said river and harbor, and at or near the point of confluence of the said River into or with the said Grays Harbor; that at or near the point of such confluence, the said bridge claimed by plaintiff in this action, has been constructed, same being about Seventeen Hundred Feet in length and extending across the waters of the said River and Harbor and connecting the said Southerly Banks of the said waters in South Aberdeen, aforesaid, with the Northerly Banks of the said waters in Aberdeen proper; that as part of its construction the said bridge was provided with a swinging draw span about Two Hundred and Fifty Feet in length or about One Hundred and Twenty-five feet upon each side of the central pier or pivot thereof, which is located at or near the middle of the channel of the said River or Harbor aforesaid; that by means of such draw the navigation of said River and Harbor along the line of and through the said bridge is possible, but not otherwise.

Fifth. That the said Steamer Norwood, being in good order and well and sufficiently equipped and manned, did on the 4th day of May, 1906, sail from her home port of San Francisco in the State of California bound for the city of Aberdeen in the State of Washington, having on board, passengers and freight destined for the last named City; that said Steamer Norwood, proceeded on her passage, at her regular rate of speed until she arrived at the "G" street dock, in the City of Aberdeen in the State of Washington on the 7th day of May, 1906, at the hour of about ten o'clock in the forenoon of said day; that at the place last mentioned the said Steamer Norwood, having discharged her passengers and cargo of freight destined

for the City of Aberdeen, was about to proceed to the dock or wharf of the Aberdeen Lumber & Shingle Company, situated on the waters of the said Chehalis River in South Aberdeen, aforesaid, a distance of about Forty Four Hundred Feet up said River from the said "G" Street wharf or dock, same being the place where he said Steamer Norwood was to receive her cargo of freight destined for the City of San Francisco in the State of California, when the said Steamer gave the usual and customary signals to the said plaintiff and his employees in charge of said bridge and draw, to-wit:—One long and Three short whistles, for the opening of the said bridge for the passage of the said Steamer from the said "G" Street wharf or dock to the said wharf or dock of the said Aberdeen Lumber & Shingle Company; that the said "G" Street wharf or dock where the said signals were given was and is distant from the

draw bridge about Eighteen Hundred Feet; that upon the giving of the said signals the Master of the said vessel, defendant herein, John I. Martin, relieved the said vessel of her fastenings at the "G" Street wharf or dock and proceeded in a slow and cautious manner towards the said bridge using only such of the motor power of the said vessel as was necessary to control the same; that at the last aforesaid there was blowing upon the waters of the said River and Harbor a strong northwesterly wind; that at the time and place there was a strong flow of the tide in the said waters; that the said tides were moving in the same direction as and with the current towards said bridge from the said "G" Street wharf or dock; that upon the giving of the signals to open the said bridge, as aforesaid, the tenders of the said bridge or the parties in charge of the said bridge gave no indication by signal or otherwise that the signals to open would not be complied with, and the Master of the said vessel, defendant herein, had every reason to believe that the signals of the said vessel to open the said bridge would be complied with and the said bridge opened for the passage of the said vessel in due time; that after the said vessel had proceeded towards the said bridge and had gotten at a point about midway between the said "G" Street dock or wharf and the said bridge, to-wit: about Nine Hundred Feet from the said bridge, it was discovered by the Master of the said vessel that the said bridge had not opened, whereupon the Master of the said vessel repeated his signals to open the said bridge and at the same time brought his vessel as nearly to a stand still as it was possible to do under the conditions stated; that upon the giving of the said second signals by the said Steamer to the said bridge, the Master of the said vessel, defendant herein, John I. Martin, observed that the said bridge was being opened by revolving the draw span with the northerly end thereof towards the said river and from the said vessel, whereupon the said Master was induced to believe and did believe that the said bridge would be opened in due time for the passage of the said vessel by the time the said vessel had reached the bridge and was ready to make such passage; that acting upon such belief and not knowing to the contrary, the Master aforesaid, proceeded with his said vessel in a slow and cautious manner in the direction of such anticipated opening and while so proceeding and when within about one hundred and fifty feet of the dolphin or rest for the said draw span, the said Master observed for the first time that the tenders of the said bridge or parties having charge, had not only failed to complete the opening of the said bridge as theretofore indicated, and expected by the said Master, but in truth and in fact brought the said bridge back to a closed position, thereby entirely cutting off and rendering impossible the passage of the said vessel through the said draw or opening by completely obstructing the navigation of the said river and at the same time the employees of plaintiff and tenders of said bridge gave signal to the said vessel by violently waving a red flag toward the said vessel from the said bridge, which signal meant to the master of the said vessel, and was understood by the Master to mean that the said bridge was out of repair and would not be opened and that it was

dangerous and that the vessel should keep off; that the said Master, defendant herein, finding himself and his vessel in an extremely dangerous position, caused by the negligence and misconduct and failure of the tenders of the said bridge across the said River, to open the draw in time for the passage of his steamer, and in closing the draw as above stated and in the giving of the said signal, did, for the purpose of avoiding any injury or damage to said vessel and the said bridge or either of them, endeavor to change the course of the said vessel in such a manner and form as to avoid any collision of the said vessel with the said bridge; but by reason of the proximity of the said vessel to the said bridge endeavored to back said vessel, but finding that to do so would cause said vessel to collide with the center pier or span rest of said bridge, then endeavored to turn said vessel around and return down stream, but when he had turned said vessel part way around he found that there was not room, because of the narrowness of the said stream, to enable him to completely turn said vessel around, and that if he continued in the direction he was going he would strand said vessel in the shallow water on the south side of said stream, thereupon, he dropped anchor and endeavored by that means to prevent the collision between said vessel and said bridge, but that the wind and tide carried the stern of said vessel around towards said bridge and caused it to strike lightly the cross-beam on the pier of said bridge, or the superstructure of said bridge, without any fault or negligence on the part of her said Master or parties having charge of said vessel; that the said Captain or Master, and crew of the said Steamer Norwood, used the greatest skill and care in the management of the same at the time aforesaid and took every possible precaution to prevent the occurrence of any accidents; that every precaution was taken and every effort made and all reasonable care, skill and diligence used by the person having charge of the said vessel, to avoid such collision, but under the conditions hereinabove expressed and hereinafter stated, the collision could not be avoided.

37 Sixth. That the accident aforesaid and its effects were the result of each and every of the following negligent and wrongful acts, matters and things done and committed by the owner of the said bridge and the tenders thereof, to-wit:

1. That the piers made and used for the support of that part of the said bridge with which the said vessel collided, as aforesaid, were wholly insufficient in size and construction for the uses and purposes above stated; that the said bridge was out of repair.

2. That the piers last above mentioned were on the 7th day of May, 1906, and for a long time prior thereto allowed to be and remain in a wholly unprotected condition, when at a small cost and expense each and every of the said piers might and could, and in fact, should have been protected by means of dolphins driven in the bottom of the said River above and below such piers.

3. That the owner of said bridge and those having charge of the operation of the said bridge, failed to provide the Master of said vessel with any rules or regulations or signals for the management of the

bridge, and the Master of the said vessel was wholly unadvised of such regulations, if there were any.

That the said owner of the said bridge failed to provide suitable and competent person or persons to manipulate or tend the said bridge and conduct its operation as by law they are bound to do.

That the owner of the said bridge and those having charge of its use and operation relied upon electricity to operate the draw; and under pretense of operating said bridge by means of electricity, provided to be used and did use in connection with such operation of the draw span of the said bridge, electric machinery wholly inadequate for such use; that the wire cable which conducted the electricity to the machinery of the said bridge was broken, of which plaintiff and his employees in charge of the said bridge had knowledge; and that the electric energy with which the draw was operated was also used to operate the street cars, and that when the street car was approaching said bridge it consumed so much of the electric energy that there was not enough power left to promptly and expeditiously operate the draw, and that at the time said vessel was giving signals to open said draw a street car was approaching said bridge and had nearly reached it and consumed electric energy or so much of it that there was not enough transmitted to the machinery of said bridge to operate said draw; and that said bridge was further out of repair to such extent, that when there was not enough electricity to operate said draw it would bind and break on the piers or on the center, and it required more than hands ever supplied by plaintiff to properly operate said draw, and that at that particular time the bridge tender, the employee of plaintiff, was just out of the hospital recovering from severe illness and had not sufficient strength to open said draw, and plaintiff had neglected to supply him with competent and sufficient assistance to operate said draw.

3. That the owner of the said bridge and those having charge of the same as tenders, did on the 7th day of May, 1906, wrongfully and unlawfully give preference to passage over said bridge when and at such time as such owner and tenders should have made ready for the passage of said vessel, and the time when the said bridge should have been opened for the passage of the said vessel was employed by such owner and tenders in receiving and giving passage over said bridge to foot and wagon passengers.

7. That the said tenders of the said bridge failed to give the Master of said vessel any warning or signal in any manner or form whatsoever, that the bridge would not be opened in response to the whistles of the said vessel as hereinabove alleged, until the said steamer had approached to a dangerous position relative to said bridge that the signal finally used was wholly inadequate for the purposes intended, both as to kind and manner and time of giving such signals.

8. That the owner of the said bridge and those employed in its use and operation as tenders were guilty of great negligence and want of care in decoying the said Master of the said vessel into the belief that the said bridge would be opened, by open-

ing the same partially and then closing it against the vessel and its passage and the giving of the said danger signal, whereby the said Steamer was placed in an extremely dangerous position from which condition or position, caused as aforesaid, the said Master of said vessel was attempting to relieve the said vessel when the collision occurred.

As another further and second affirmative defense herein defendants allege:

First. That by reference thereto defendants herein, make each and every allegation, matter and thing set forth in paragraph "first to sixth," inclusive, of defendants "First Affirmative Defense" herein, and each and every of the sub-division of the said paragraph a part of this allegation and paragraph and defense.

Second. That by reason of all the matters and things so above alleged in the first paragraph of defendants' "Second Affirmative Defense," herein, this Honorable Court has not jurisdiction and ought not to proceed to enforce the claim alleged in plaintiff's complaint herein against the said Steamer Norwood, or against these defendants in their proper person as prayed for in and by said complaint for the following reasons and each of them, to-wit:

1. Because the right of action in this case is based upon the provisions of Secs. 5953 and 5954 of Bal. Code and Statutes of Washington and particularly sub-division "6" of said Sec. 5953; that the right thereby created and sought to be enforced in this action by the plaintiff herein, is in violation of the 8th Sec. of Art. "1" of the Constitution of the United States, which provides, among other things, as follows to-wit:

"Congress shall have power:—To regulate commerce with foreign nations and among the several states."

40 2. Because the enforcement of Secs. 5953 and 5954 of Bal. Code and Statutes of Washington as sought by the Plaintiff in this action would be to deprive the owners of the Steamer, Norwood, of their property without due process of law and without the equal protection of the law as provided by Art. "14" of the Amendments to the Constitution of the United States, which is as follows, to-wit:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. Because the enforcement in this case of Plaintiff's alleged cause of action based upon said Secs. 5953 and 5954 of Bal. Code and Statutes of Washington would be in violation of defendants' rights as expressed in Sec. "2" of Article "3" of the Constitution of the United States, as follows, to-wit:

"The judicial power shall extend to all cases of admiralty and maritime jurisdiction;"

And sub-division 8th of Sec. 563 of the Revised Statutes of the United States, which provided that "The district courts shall have

jurisdiction as follows:—Of all civil causes of admiralty and maritime jurisdiction."

Wherefore these defendants having fully answered pray judgment:

1. That plaintiff take nothing by his suit herein.
2. That these answering defendants go hence without day and with their costs and disbursements herein.

J. C. CROSS AND
W. H. BRINKER,
Attorneys for Defendants.

1 STATE OF WASHINGTON,
County of Chehalis, ss:

J. C. Cross being first duly sworn on oath states that he is one of the attorneys for the defendants in the above entitled action, and makes this affidavit on behalf of said defendants for the reason that they are not now within said Chehalis County; that he has read the foregoing answer knows the contents thereof, and that the same is true as he verily believes.

J. C. CROSS.

Subscribed and sworn to before me this 15th day of September, 1906.

[SEAL.] A. EMERSON CROSS,
*Notary Public in and for the State of Washington,
Residing at Aberdeen, Wash.*

Filed Sep. 27, 1906.

W. C. BIRDWELL, *Clerk.*

42 In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Capt. MARTIN and ED. H. HULBERT et al., Defendants.

Order on Motion.

This cause coming on for hearing on the motion of the plaintiff to dismiss as to the defendant E. H. Hulbert and the same being consented to by J. C. Cross attorney for said Hulbert and the Court being fully advised in the premises, it is ordered that the said motion be and the same is hereby granted.

And it is ordered that this action be and the same is hereby dismissed as to the defendant Ed. H. Hulbert, without costs to either party.

Done in open Court this 24th day of Sept., 1906.

MASON IRWIN, *Judge.*

CROSS.

Filed Sept. 24, 1906, and entered on page 23 of Journal No. 23.

W. C. BIRDWELL, *Clerk*,
By A. E. GRAHAM,
Deputy Clerk.

43 In the Superior Court of the State of Washington in and for
Chehalis County.

A. J. WEST, Plaintiff,
vs.
JOHN I. MARTIN et al., Defendants.

Notice.

To the above named plaintiff, A. J. West, and to John C. Hogan,
Esq., his attorney herein:

You and each of you will please take notice that the defendants
in said action, John I. Martin, et al., have and by these presents do
make and enter their objection and protest against submitting the
said cause, or any matter pertaining thereto, to a jury.

That subject to their objections heretofore made to the jurisdic-
tion of the court the said defendants insist that whatever of hearing
or trial *he* had in said cause shall be by and before the Court as a
court of equity, and that all of the issues in said cause, both of law
and of fact, shall be tried by such Court.

Dated this 13th day of October, 1906.

J. C. CROSS,
Of Attorneys for Defendants.

Served Oct. 13, 1906.

JOHN C. HOGAN,
Att'y for Pl'ffs.

Filed Oct. 15, 1906.

W. C. BIRDWELL, *Clerk*.
A. E. GRAHAM, *Deputy*.

44 In the Superior Court of the State of Washington in and for
Chehalis County.

A. J. WEST, Plaintiff,
vs.
JOHN I. MARTIN et al., Defendants.

Notice.

To the above named plaintiff, A. J. West, and to John C. Hogan,
Esq., his attorney herein:

You and each of you will please take notice that the defendants
in said action, John I. Martin, et al., have and by these presents do

make and enter their objection and protest against submitting the said cause, or any matter pertaining thereto, to a jury.

That subject to their objections heretofore made to the jurisdiction of the Court, the said defendants insist that whatever of hearing or trial *he* had in said cause shall be by and before the Court as a court of equity, and that all of the issues in said cause, both of law and of fact, shall be tried by such Court.

Dated this 13th day of October, 1906.

J. C. CROSS,

Of Attorneys for Defendants.

Filed Oct. 15, 1906.

W. C. BIRDWELL, *Clerk.*

45 In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated by and between the parties to the above entitled action through their respective attorneys of record herein that the trial of said cause may be postponed and continued to the 9th day of November, 1906, in the forenoon of said day, and that the Court may so order upon the filing of this stipulation, said cause to be tried by the court without a jury.

Signed in duplicate this 16th day of October, 1906.

JOHN C. HOGAN

Attorney for Plaintiff.

J. C. CROSS,

Of Attorneys for Defendants.

Filed Oct. 16, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

46 In the Superior Court, State of Washington for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON et al., Defendants.

Reply.

Now comes the plaintiff and for his reply to the separate answer of the defendants Martin, Sudden & Christenson, et al., respectfully shows to the court:

I.

That replying to paragraph 5 of the first affirmative defense of said answer, the plaintiff denies the same and each and every allegation therein contained.

II.

That replying to paragraph 6 of said answer and the several subdivisions of said paragraph 6 the plaintiff denies the same and each and every allegation therein contained.

III.

That replying to the second affirmative defense contained in said answer, the plaintiff denies each and every allegation contained in said second affirmative defense on pages 11 and 12 of said answer, the same being all of the allegations of the said second affirmative defense.

IV.

That replying to paragraph 2 of the first affirmative defense of page 4 of said answer, this plaintiff has not sufficient knowledge or information to form a belief as to the truth of the matters
47 therein alleged:

JOHN C. HOGAN
Attorney for Plaintiff.

STATE OF WASHINGTON,
County of Chehalis, ss:

A. J. West, being first duly sworn, on oath says: that he is the plaintiff in the above entitled action; that he has read the foregoing reply knows the contents thereof and believes the same to be true.

A. J. WEST.

Subscribed and sworn to before me this 25th day of September, 1906.

JOHN C. HOGAN,
*Notary Public in and for said State,
Residing at Aberdeen, Washington.*

Filed Nov. 3, 1906.

W. C. BIRDWELL, *Clerk.*
A. E. GRAHAM, *Deputy.*

48 In the Superior Court of the State of Washington for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe, and Richard Roe, Defendants.

The State of Washington to Captain Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, Ed. Hulbert, John Doe Sudden, and Richard Roe, Defendants:

You are hereby summoned to appear within twenty days after the service of this summons upon you exclusive of the day of service, and defend the above entitled action in the court aforesaid: and in case of your failure so to do judgment will be rendered against you, according to the demand of the complaint which will be filed with the clerk of said court and a copy of which is herewith served upon you.

JOHN C. HOGAN,

Plaintiff's Attorney.

P. O. Address: Aberdeen, Chehalis County, Washington.

Filed Nov. 3, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

49 In the Superior Court, State of Washington for Chehalis County.

A. J. WEST Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Motion.

Now comes the plaintiff in the above entitled action and move- the court for an order permitting the plaintiff to amend his complaint herein by adding at the end of paragraph 1 of said complaint, the following "that the said Sudden & Christenson is a foreign corporation organized under the laws of California authorized to transact business within the State of Washington and actually engaged in the transaction of business in the said last named state."

Plaintiff further moves for leave to file a supplemental complaint herein, copy of which is herewith served.

JOHN C. HOGAN,

Attorney for Plaintiff.

To J. C. Cross, Attorney for defendants:

Take notice that at the court house in the City of Montesano, Chehalis County, Washington, on November 5, 1906, the plaintiff will call up for argument and decision by the court the foregoing motion.

JOHN C. HOGAN,
Attorney for Plaintiff.

Filed Nov. 3, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

50 In the Superior Court of Washington for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

For Nov. 5, 1906.

Notice for hearing motion for leave to amend complaint and for leave to file supplemental complaint.

JOHN C. HOGAN,
Att'y for Pl't'ss.

J. C. CROSS,
Att'y for Def't.

Filed by Hogan, Att'y.

Filed Nov. 3, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

51 In the Superior Court of the State of Washington for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Order on Motion.

This cause coming on for hearing on the motion of plaintiff's motion to amend the complaint and the same being argued by counsel, and the court being fully advised in the premises, it is ordered that the said motion be and the same is hereby granted and the plaintiff is allowed to amend by interlineation to which ruling of the Court Def'ts excepts and his exception is allowed.

Done in open Court this 5th day of Nov. 1906.

MASON IRWIN, *Judge.*

Filed Nov. 5th, 1906, and entered on page 86 of Journal No. 23.

W. C. BIRDWELL, *Clerk.*

52 In the Superior Court of Washington in and for Chehalis
County.

A. J. WEST, Plaintiff,
vs.
Captain JOHN I. MARTIN et al., Defendants.

Order.

This matter coming on to be heard on the 7th day of November 1906, for trial by the court there being present in Court the Plaintiff in person and his attorney of record, John C. Hogan, and the defendant, John I. Martin, and attorneys for the defendants, of record, William H. Brinker, and J. C. Cross, and the Court proceeding heard the pleadings and the proofs offered and submitted in chief by the plaintiff and the proofs offered and submitted by the defendants in support of their answer when the defendants upon announcement in open court, after they rested their defense, asked permission of the court to amend their answer to conform with the proofs offered and submitted in the following particulars:

(1) By interlining after the word "River" in the fifth line from the bottom of page "7" of the defendants' answer, the following to-wit: "and at the same time the employees of plaintiff and tenders of said bridge gave signal to the said vessel by violently waving a red flag toward the said vessel from the said bridge, which signal meant to the master of the said vessel and was understood by the master to mean that the bridge was out of repair and would not be opened, and that it was dangerous and that the vessel should keep off."

(2) And by inserting after the word "stated" in the last line on said page "7" of the said answer, the following, to-wit: and in the giving of the said signal.

53 (3) And by adding after the word "manner" in the last line of the 7th paragraph at page "10" of the said answer the words following, to-wit "and time."

(4) And by interlining after the word "passage" in the 5th line from the bottom of said page "10" of the said answer the following to-wit: "and the giving of the said danger signal."

And the court having heard the said motion or application by the said defendant to amend as aforesaid in the particulars aforesaid, grants the same and the defendants be and they are authorized to amend their said answer as requested by interlineation in manner and form above stated.

Done in open court this the 13th day of November, A. D. 1906.

MASON IRWIN, *Judge.*

Filed Nov. 15th, 1906 and entered on page 95 of Journal No. 23.

W. C. BIRDWELL, *Clerk.*

54 In the Superior Court of the State of Washington for Chehalis County.

No. 6330.

A. J. WEST, Plaintiff,

vs.

Capt. JOHN I. MARTIN et al., Defendants.

Memorandum of Decision.

This action was brought by the plaintiff against the defendants for the purpose of recovering damages alleged to have been sustained by reason of the steamship Norwood colliding with the bridge which crosses the Chehalis River at Aberdeen and is owned by the plaintiff. The first objection that is made to the complaint by the defendants is that this Court has no jurisdiction over the subject-matter of the action, and the defendants have cited a great many authorities, which they contend, support their position. All the cases that I have been able to obtain and examine are cases where the owner of the ship have sued the owner of the bridge for damages to the ship occasioned by a collision with the bridge. All of those cases were in admiralty courts and it must be conceded that the admiralty assumes jurisdiction of all such cases, that is where the owner of the ship complains of injury to his ship by reason of collision with the bridge, but on the contrary all authorities upon the subject hold that where the injury complained of is to the bridge and not to the ship in those cases it is held that the bridge, although it spans the water, is a land structure built permanently upon the land, and that admiralty will not assume jurisdiction for such cases of action and that the remedy for such an injury must be sought in the state courts. I therefore hold that in this case the court has jurisdiction over the subject matter of this action.

55 It is admitted that the ship Norwood did collide with the bridge and that one of the piers shortly thereafter collapsed and one span of the bridge fell into the river. The question then between the parties is who was guilty of the negligence which caused the collision. The evidence in the case was very conflicting.

On the part of the plaintiff it was to the effect that the ship signalled for the bridge to open when opposite the mouth of the Wishkah River, about eight hundred feet from the bridge, and that the course the steamer was taking indicated that the captain wished to pass through the north draw of the bridge; that the bridge tender immediately waved a red flag as a signal of danger and then proceeded to open the bridge with the north draw turning up the river and away from the steamer; that the steamer came on approaching the bridge, and when she was within 150 feet or 200 feet of the bridge suddenly turned her course as if either to turn around or with an intent to pass through the south draw of the bridge, and that she afterwards got part way turned round and her

stern swinging in toward the south pier of the bridge the captain then endeavored to back through the south draw and struck the south pier.

The evidence on the part of the defendants was to the effect that when the captain saw the signal of the flag he approached under a slow bell and that the bridge instead of opening the north end up the river and away from the ship, as it had started to do, stopped and turned the other way, bringing the north end down the river and towards the ship, and that when he saw this movement on the part of the bridge he changed his course in an endeavor to pass through the south side of the draw, but was unable to do so and came in contact with the bridge, exercising his best skill and ability to avoid doing so.

56 The evidence of all the witnesses who were on the bridge and engaged in the opening of the bridge was to the effect that the north end of the bridge opened up the river and away from the ship, and that it continued on its course from the time it started until it was clear open and did not change its course and did not open down the river and towards the ship. These witnesses, being on the bridge and engaged in opening the bridge were in better position to know how the bridge actually was opened than persons from any other point of view. Their testimony was corroborated also by the witness Leach, who stood on the Bryden and Leitch wharf on the south side of the river, watching the operations of the ship and bridge. It was also corroborated by other witnesses and by one standing on Wilson's mill wharf on the north side of the river and very near to the bridge.

The weight of evidence upon this point is with the plaintiff. Plaintiff's witnesses were certainly in a better position to observe the way in which the bridge was opened than other witnesses. We therefore conclude that the captain must have been mistaken in thinking that the bridge stopped in its original course of opening and turned to open in the opposite direction, and that therefore the negligence was upon his part and not upon the bridge tenders.

The testimony of all those upon the bridge was to the effect that if the ship had continued her course as originally taken to pass through the north side of the draw there would have been no accident for the reason that the bridge was almost entirely open, or at least sufficiently so to have allowed the vessel to pass through if it had continued its course through the north draw.

The plaintiff will be given judgment in the sum of \$10,511.89 dollars which I find to be the actual cost of reconstructing the bridge in as good condition as it was when struck by the steamer, 57 to which will be added the sum of \$3,240 loss of income during the time that the bridge was down, making a total of \$13,751.89.

MASON IRWIN, *Judge.*

Dated this 26th day of January 1907.

Filed Jan. 26, 1907.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

58 In the Superior Court, State of Washington for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, and CHARLES E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Findings of Fact and Conclusions of Law.

The above entitled cause coming on regularly to be tried upon the issues raised by the pleadings herein, the plaintiff, A. J. West, appearing in person and by his attorney, and the defendants John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John Sudden, appearing by their attorneys W. H. Brinker and J. C. Cross, and after hearing the evidence and arguments of the counsel, the court being fully advised in the premises, finds:

I.

That on the 7th day of May, 1906, the plaintiff, A. J. West, was the owner of a certain steel or combination wood and steel drawbridge together with the approaches belonging to the same, extending across the Chehalis River from South Aberdeen to Aberdeen proper in Chehalis County, Washington, said bridge being used by the plaintiff as a toll bridge for the passage of passengers, street cars, teams and vehicles from whom and from which the plaintiff was entitled to collect and did collect tolls; that said bridge had been erected and was maintained and operated by said plaintiff at said point for some months prior to said date and that the erection and maintenance of said bridge was affirmatively authorized by the Honorable Secretary of War of the United States and that the

59 same constituted and was a lawful structure in said stream; that said drawbridge was provided with a large swinging span capable of being opened by revolving the same upon a central pier constructed in the channel of the said Chehalis River so that when said span was open it afforded two passage-ways, one on each side of said central pier for the passage of vessels, steamers and other crafts up and down the said Chehalis river.

II.

That on the 7th day of May, 1906, the defendants, John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John Sudden, owners of the steamer "Norwood," were engaged in operating said steamer on the said Chehalis River, said steamer being making regular runs between Grays Harbor, Washington, and San Francisco, California; that said vessel was a vessel of the steam schooner type having a gross ton-age of about 760 tons and a net ton-age of about 490 tons; that on the said 7th day of May, 1906,

said defendants last above named, were engaged in operating the steamer "Norwood," together with her boiler, engines, tackle, apparel and furniture, in the vicinity of the said plaintiff's bridge, the steamer "Norwood" being under her own steam and motive power, and that while said defendants were engaged in passing their vessel through the draw of the plaintiff's said bridge, the defendants negligently carelessly and through failure to exercise ordinary skill in the handling, management and navigation of said vessel, ran said vessel against the supporting piers of one of the spans of plaintiff's bridge and struck, broke and injured the piers supporting the plaintiff's said bridge to such an extent that within a few hours thereafter, one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the Chehalis River and was broken up and almost totally destroyed.

III.

That the damage done by the said defendants to the plaintiff's said bridge was the sum of \$10,511.89.

IV.

That by reason of the breaking and injury done by the said defendants to the plaintiff's said bridge, the plaintiff was deprived of the use of said bridge and of the earning thereof from May 7, 1906, to October 20, 1906, and that the plaintiff's loss and damage by reason of so being deprived of the use and earning of said bridge for said period was the sum of \$3240.00.

V.

That the plaintiff's total damage by reason of said defendants' wrongful acts amounted to the sum of \$13,751.89 for which damage the plaintiff claimed and asserted a lien upon the said steamer "Norwood" her boilers, engines, tackle, apparel and furniture and caused said vessel to be seized thereunder but that said vessel was released upon the application of said defendants, released on a bond given herein and the security of said bond was substituted for the said vessel.

Conclusions of Law.

And as conclusions of law the court finds:

1. That the plaintiff, A. J. West, is entitled to a judgment against the defendants, John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John Sudden for the sum of \$13,751.89 together with the costs and disbursements of this action and is entitled to have execution therefor.
2. That the said plaintiff is entitled to have recourse upon the bond filed herein, by action upon said bond, for the collection and enforcement of said judgment.

The defendants except to each and every one of the foregoing findings and conclusions and their exceptions are allowed.

Dated this 26th day of March, 1907.

MASON IRWIN, *Judge.*

Filed Mar- 26, 1907.

W. C. BIRDWELL, *Clerk.*

61 In the Superior Court, State of Washington for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, and CHARLES E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Judgment.

The above entitled action coming on regularly to be tried, before the court without a jury, in accordance with the stipulation of the parties filed herein, and the plaintiff, A. J. West, appearing in person and by his attorney, and the defendants, John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, appearing by their attorneys W. H. Brinker and J. C. Cross, the defendant John I. Martin also appearing in person, and after hearing the evidence and the arguments of the counsel, the court made and entered its findings of fact and conclusions of law herein, now, therefore, in accordance with said findings of fact and conclusions of law, on motion of the plaintiff,

It is ordered and adjudged that the plaintiff, A. J. West, do have and recover of and from the defendants John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John Sudden, and each of them, the sum of Thirteen Thousand Seven Hundred Fifty one and 89/100 Dollars (\$13,751.89) together with the costs and disbursements of this action taxed at the sum of \$222.70 Dollars, and that execution issue therefor.

Defendants except and there exceptions is allowed.

Dated this 26th day of March, 1907.

MASON IRWIN, *Judge.*

Filed March 26, 1907, and entered on page 252 of Journal No. 23.

W. C. BIRDWELL, *Clerk.*

2 In the Superior Court of the State of Washington for Chehalis County.

A. J. WEST, Plaintiff,

VS.

JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. CHRISTENSON, ROBERT SUDDEN and JOHN SUDDEN, Defendants.

Cost Bill.

Clerk's Fees	\$10.00
Sheriff's fees \$3.50, serving subpoenas \$18.00	21.60
Attorney's Fees	5.00
5 Affidavits	2.50

Witness Fees.

E. Wirchulet, 5 days, 300 mi.	\$40.00
J. B. Shelley, 3 days, 24 mi.	8.40
J. B. Haynes, 2 days, 24 mi.	6.40
J. L. Kile, 1 day, 90 mi.	11.90
E. L. Houser, 2 days, 24 mi.	6.40
Robt. Birmingham, 2 days, 24 mi.	6.40
H. Halverson, 2 days, 24 mi.	6.40
E. R. West, 2 days, 24 mi.	6.40
R. W. McSorley, 2 days, 110 mi.	13.00
Joe Tanner, 3 days, 28 mi.	8.80
O. Knapp, 3 days, 24 mi.	8.40
H. Van Tassell, 2 days, 300 mi.	34.00
James Leitch, 2 days, 24 mi.	6.40
Wm. McKinney, 2 days, 24 mi.	6.40
O. Gould, 3 days, 24 mi.	8.40
J. B. Gould, 3 days, 24 mi.	8.40
E. L. Carpenter, 3 days, 208 mi.	26.80
W. W. Anstie, 1 day, 24 mi.	4.40

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J. H. Wilson, 1 day, 24 mi.	\$4.40
W. P. Gilbreath, 1 day, 24 mi.	4.40
Wm. Gilbraith, 1 day, 24 mi.	4.40
Geo. Schriever, 1 day 24 mi.	4.40
Aug. Stiffens, 2 days, 24 mi.	6.40

Witness Fees, Total	\$242.30
Clerk, Sheriff and Attorney's Fees	\$44.10
Total	\$286.40

STATE OF WASHINGTON,
County of Chehalis, ss:

John C. Hogan being first duly sworn says that he is of counsel for the pl'tff in above entitled cause, and that the foregoing is a true exhibit of the costs and disbursements necessarily incurred in said cause and court, and that the same is true as he verily believes.

JOHN C. HOGAN.

Subscribed and sworn to before me this 26th day of March, 1907.

[SEAL.]

F. E. JONES,

Notary Public in and for the State of
Washington, Residing at Aberdeen, Wash.

Filed Mar. 27, 1906.

W. C. BIRDWELL, Clerk.

64 In the Superior Court of Washington in and for Chehalis
County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the said action through their respective attorneys of record herein that the defendants in said action may have until the 10th day of May, 1907, in which to make, file and serve their proposed statement of facts on appeal herein.

Signed in Duplicate and dated this the 24th day of April, A. D. 1907.

JOHN C. HOGAN,

Attorney for Plaintiff.

J. C. CROSS,

Of Attorneys for Defendants.

Filed Apr. 26, 1907.

W. C. BIRDWELL, Clerk.

65 In the Superior Court of Washington in and for Chehalis
County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Appeal Bond.

Know all men by these presents: That John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, John Sudden and

Robert Sudden, defendants herein, as principals and "The Metropolitan Surety Company of New York City," are held and firmly bound unto the plaintiff herein, A. J. West, in the penal sum of Two hundred (\$200.00) Dollars for the payment of which sum well and truly to be made, the said principals and the said surety bind themselves, their and each of their legal representatives and assigns, jointly and severally firmly by these presents.

Executed and delivered this the 6th day of May, A. D. 1907.

The conditions of the above obligations are such that,

Whereas in the above entitled action judgment has been rendered against the said principals and defendants in favor of the said Plaintiff, and

Whereas the said principals, defendants in said action, feeling grieved at the said judgment rendered, made and entered as aforesaid, are desirous of appealing to the Supreme Court of the State of Washington therefrom.

Now therefore in consideration of the premises and the law governing appeals, if the said bounded principals shall well and truly pay any and all costs and damages that may be awarded against them on the appeal, or on the dismissal thereof, not exceeding Two hundred (\$200.00) Dollars, then these obligations to be void, otherwise to remain in full force and effect.

JOHN I. MARTIN,
SUDDEN & CHRISTENSON,
CHARLES E. SUDDEN,
E. A. CHRISTENSON,
ROBERT SUDDEN, AND
JOHN SUDDEN, *Principals*,
By J. C. CROSS, *Of Their Attorneys*.
THE METROPOLITAN SURETY
CO., *Surety*,

[L. S.]

By FRANK O. DOLE, *Agent*.

Filed May 9, 1907 and entered on page 307 of Journal No. 23.

W. C. BIRDWELL, *Clerk*.

In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

VS.

JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Stay Bond.

Know all men by these presents: That John I. Martin, Sudden Christenson, Chas. E. Sudden, E. A. Christenson, John Sudden and Robert Sudden, defendants herein, as principals and "The Metropolitan Surety Company of New York City," as surety, are

held and firmly bound unto the said A. J. West, plaintiff in said action in the penal sum of Thirty Thousand (\$30,000.00) Dollars for the payment of which sum well and truly to be made, the said principals and the said surety bind themselves, their and each of their legal representatives and assigns jointly and severally firmly by these presents.

Executed and delivered this the 8th day of May, A. D. 1907.

The conditions of the above obligations are such that,

Whereas plaintiff in said action recovered a judgment against the defendants, principals herein, for the sum of \$13,751.89 and costs of suit; and,

Whereas the said defendants, principals herein, feeling aggrieved at the said judgment are desirous of appealing therefrom to the Supreme Court of Washington; and,

Whereas the said defendants, principals in this bond, are desirous of staying the execution of the said judgment pending the said appeal.

Now therefore in consideration of the premises and the law, if the said bounden principals shall well and truly pay and satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the Supreme Court may render or make or order to be rendered or made by the Superior Court then this obligation to be void, otherwise to be and remain in full force and effect.

JOHN I. MARTIN,
SUDDEN & CHRISTENSON,
CHARLES E. SUDDEN,
E. A. CHRISTENSON,
ROBERT SUDDEN, AND
JOHN SUDDEN, *Principals*,

By J. C. CROSS, *Of Their Attorneys*.
THE METROPOLITAN SURETY
CO., *Surety*,

[L. s.]

By FRANK O. DOLE, *Agent*.

Filed May 9, 1907, and entered on page 308 of Journal No. 23.

W. C. BIRDWELL, *Clerk*.

67 In the Superior Court of the State of Washington for
Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Order on Motion.

This cause coming on for hearing on the motion of defendant to retax costs and the same being argued by counsel, and the Court being fully advised in the premises, it is ordered that the said motion be and the same is hereby sustained in every matter except as to wit-

ness, Carpenter; that as to witness Carpenter the objection is overruled; and the Clerk is directed to strike from the costs' bill so as to conform with the order. The amount stricken being, \$63.70, to which ruling of the court plaintiff excepts and his exception is allowed.

Done in open Court this 8th day of April, 1907.

MASON IRWIN, *Judge.*

Filed April 8, 1907, and entered on Page 264 of Journal No. 23.

W. C. BIRDWELL, *Clerk.*

68 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Acknowledgment of Service.

Service, by copy of the Findings of Fact and Conclusions of Law, and Judgment made and entered on the 26th day of March, A. D. 1907, and subsequent to the hearing of said cause and in the absence of the defendants and their counsel, (in duplicate).

Acknowledged this the 16th day of April, A. D. 1907.

J. C. CROSS, AND

WM. H. BRINKER,

Attorneys for Defendants in Said Action.

Filed Apr. 17, 1907.

W. C. BIRDWELL, *Clerk.*

69 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the Plaintiff in said action, by and through his attorney of record herein, John C. Hogan, Esq., and the defendants herein, by and through their attorneys of record herein, J. C. Cross and William H. Brinker, that the time for making and filing of exceptions to the findings of fact and conclusions of law and judgment herein, is continued to the 26th day of April, 1907, within which time they may be made and

filed with the same force and effect as if filed on the 26th day of March, 1907, or the date of the entry of the judgment herein.

Signed in Duplicate, Apr. 16, 1907.

JOHN C. HOGAN,
Attorney for Plaintiff.
J. C. CROSS, AND
WM. H. BRINKER,
Attorneys for Defendants.

Filed Apr. 17, 1907.

W. C. BIRDWELL, *Clerk.*

70 In the Superior Court of Washington for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Notice of Hearing.

To the above named Plaintiff, A. J. West, and to John C. Hogan, the attorney of record herein:

You and each of you will take notice that at the Court House in the City of Montesano, County of Chehalis, State of Washington, on the 8th day of April, 1907, at the hour of 10:30 o'clock A. M. of that day, or as soon thereafter as counsel can be heard, the above named Defendants, will call up for hearing and determination by the Court, the Motion of defendants, to re-tax costs made and served herein.

J. C. CROSS, AND
W. H. BRINKER,
Attorneys for Defendants.

Filed April 6, 1907,

W. C. BIRDWELL, *Clerk,*

By A. E. GRAHAM, *Deputy.*

71 In the Supreme Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Notice of Appeal.

To the above named plaintiff, A. J. West, and to John C. Hogan, Esq., his attorney of record herein, and to Ed. Hulbert, defendant herein, and to J. C. Cross, his attorney of record herein:

You and each of you will take notice that the defendant, John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson,

John Sudden and Robert Sudden, feeling themselves aggrieved at the judgment and decree made and entered herein, have and by these presents do appeal to the Supreme Court of the State of Washington from the final judgment made and entered in said cause on the 26th day of March, 1907, and from each and every order made and entered in said cause adversely to the defendants last aforesaid, during the progress of the said cause or the pendency of the said action in the above entitled court.

Dated this the 6th day of May, A. D. 1907.

J. C. CROSS AND
WM. H. BRINKER,

Attorneys for Defendants John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, Robert Sudden, and John Sudden.

Service of the above notice of Appeal acknowledged this the 7th day of May, A. D. 1907.

JOHN C. HOGAN,
Attorney for Plaintiff.

Filed May 9, 1907, and entered on Page 306 of Journal No. 23.
W. C. BIRDWELL, *Clerk.*

72 In the Superior Court of the State of Washington, in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Exceptions to Cost Bill and Motion to Retax Costs.

Come now the above named defendants, and except to the Cost Bill of Plaintiffs, made and served herein, and move the Court for an order striking therefrom the following items:

From Sheriff's fees, \$10.85.

From fees of witness, Wirschulet, 1 day and 276 miles.

From fees witness, Kile, 66 miles.

From fees witness, Turner, 4 miles.

From fees witness, Van Tassel, 143 miles.

From fees witness, Carpenter, 184 miles.

From fees witness, Shelley, 1 day.

And for grounds of their motion, defendants alleges:

First. That the charge of \$18.00 is excessive in the sum of \$10.85, all subpoenas, excepting two having been served by a private citizen, if at all, and not by the sheriff or any deputy.

Second. That the amount asked to be stricken from the several witness fees is the amount in excess of the amount claimed by the respective witnesses, except as to the witness, Carpenter who was

and is a resident of Aberdeen, Chehalis County, Washington, and was such resident and citizen at the time of being subpoenaed as a witness in said cause and at the time of the trial of the said cause, and 24 miles is the mileage to which the said Carpenter is justly entitled under the law.

And in support of their exceptions and motion, the defendants herein offer and submit the records and files in said cause.

J. C. CROSS,
Attorney for Defendants.

Filed Apr. 5, 1907.

W. C. BIRDWELL, *Clerk,*
A. E. GRAHAM, *Deputy.*

74 In the Superior Court of Washington, in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN,
E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert,
Defendants.

Stipulation and Agreement.

This agreement and stipulation made and entered into this the 7th day of May, A. D. 1907, by and between the parties to the said action through their respective attorneys of record herein, witnesseth; that,

Whereas in the said action the parties defendant named in the Complaint therein are designated as "Captain Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe and Richard Roe," and

Whereas the parties defendant in the said answer to the said action are as follows, to-wit: "Captain John I. Martin, Sudden & Christenson, and Charles E. Sudden, E. A. Christenson, Robert Sudden, John Sudden and Ed. Hulbert," and

Whereas in the trial of the said cause and all proceedings had therein the parties hereto have taken and considered the parties named in the answer as being the same identical parties as those named in the complaint, as parties defendant, aforesaid; and

Whereas the parties defendant in the complaint aforesaid and the parties defendant in the answer aforesaid are in truth and in fact the same identical persons; and

75 Whereas the Ed. Hulbert mentioned and referred to in his answer in said action was not at the time of the commencement of said action, since or at all, a necessary or proper party defendant herein, and by the order of the court made and entered herein, he, the said Ed. Hulbert, was dismissed from the said action during the pendency thereof as not being a proper or necessary party defendant.

Now, therefore in consideration of the premises and for the purpose of avoiding any dispute or error as to the identity of the parties defendant in said action and for the purpose of identifying the parties to the said action for all purposes and particularly for the purpose of appeal in said action, contemplated by the defendants herein, it is hereby stipulated and agreed that any and all objections or exceptions that might arise or be based upon the apparent discrepancy or identity of parties defendant, herein, shall be and the same are hereby waived by each of the parties hereto.

JOHN C. HOGAN,
Attorney for Plaintiff A. J. West.

JOHN I. MARTIN,
SUDDEN & CHRISTENSON,
CHARLES E. SUDDEN,
E. A. CHRISTENSON,
ROBERT SUDDEN, AND
JOHN SUDDEN.

By J. C. CROSS,
Of Their Attorneys.

Filed May 9, 1907.

W. C. BIRDWELL, *Clerk.*

76 In the Superior Court of Washington, in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Exceptions.

Come now the above named defendants by their attorneys of record herein and except and object to the Findings of Fact and Conclusions of Law and Judgment made and filed herein and to the refusal of the court to make findings, conclusions and Judgment in favor of the defendants, respectfully represent and say:

That in the trial of the said cause and in the making of its said findings of fact and conclusions of law and judgment and in its refusal to find for defendants upon the record in said cause, the court committed manifest errors to which defendants except as follows, to-wit:

First. Exceptions to Affirmative Acts. To the Affirmative acts of the trial court the defendants submit the following exceptions:

1. They except to the ruling of the court denying defendants' objections to the jurisdiction of the court over the subject matter of the action.

2. They except to the action of the trial court in permitting plaintiff to amend his complaint at the time of the trial by substituting *tx* as party defendant herein, the Sudden & Christenson Company, a corporation.

3. Defendants except to the action of the trial court in denying defendants' motion to dismiss plaintiff's action at the conclusion of plaintiff's testimony in chief.

77 4. Defendants except to the action of the trial court in denying defendants' motion for judgment upon the evidence offered and submitted at the conclusion of the trial herein.

5. Defendants except to the finding of the court to the effect that the erection and maintenance of the bridge involved in this action was authorized by the Secretary of War of the United States; also except to the finding of the court that the bridge referred to constituted and was a lawful structure in the Chehalis River, because said findings are against the evidence.

6. Defendants except to the finding of the court that while defendants were engaged in passing the steamer Norwood through the draw of plaintiff's bridge, they, the defendants negligently, carelessly and through failure to exercise ordinary skill in the handling, management and navigation of the said vessel, ran the said vessel against the supporting piers of one of the spans of plaintiff's said bridge to such an extent that within a few hours thereafter one of the spans of plaintiff's bridge collapsed and fell into the water of the Chehalis River and was broken up and was almost wholly destroyed, because said finding is contrary to the evidence and against the weight of the evidence.

7. Defendants except to the finding of the court to the effect that defendants damaged plaintiff's bridge in the sum of \$10,511.89 or in any other sum, because said finding is contrary to the evidence.

8. Defendants except to the finding of the court in effect that defendants were responsible and liable to plaintiff in damages for the loss of the use of the bridge in the sum of \$3,240.00, or in any other sum or at all, because said finding is contrary to the evidence.

9. Defendants except to the finding of the court to the effect that the acts of the defendants were wrongful; also in holding that defendants were responsible to plaintiffs in damages in the sum
78 of \$13,751.89, or in any other sum, because said finding is contrary to the evidence.

10. Defendants except to the findings and conclusion of the court to the effect that plaintiff herein was entitled to a judgment against the defendants in the sum of \$13,751.89, together with costs and disbursements of this action; also in holding that the plaintiff was entitled to execution against the defendants in satisfaction of said sum, because said conclusion is against the law.

11. Defendants except to the action of the court in holding and concluding in effect that the plaintiff was entitled to have recourse upon the defendants' bond filed herein for the collection and enforcement of plaintiff's alleged damages, because said conclusion is contrary to law.

12. The court erred in rendering a judgment herein against these defendants in favor of the plaintiff for the sum of \$13,751.89, together with costs and disbursements of the action, or for any other sum or at all.

Second. Exceptions to Negative Acts. To the negative acts of the trial court defendants submit the following exceptions:

1. Defendants except to the refusal of the court to find that the collision complained of was caused, primarily, by the negligence of the plaintiff or those in charge of the bridge.

2. Defendants except to the refusal of the court to find that the plaintiff or those in charge of the bridge at the time of the accident were guilty of negligence.

(a) In failing to provide suitable and necessary power for the operation of the bridge.

(b) In failing to provide sufficient and necessary help or men for the manipulation of the bridge.

(c) In failing to provide necessary or any signals governing the operation of the bridge.

(d) In failing to respond, within a reasonable length of time to the signals given by the vessel for the opening of the bridge.

(e) In giving fals- signals and in the making of fals- movements calculating to and which resulted in decoying the vessel into the dangerous position from which she could not extricate herself without colliding with the bridge.

3. The defendants except to the refusal of the court to find that the Steamer Norwood, had been and was duly, sufficiently, carefully provided with competent seamen at the time of the accident.

4. Defendants except to the refusal of the court to find that any error or errors committed by the master of the vessel at the time of the accident were errors "In Extremis," only, from which no liability could arise.

5. Defendants Except to the refusal of the trial court to declare Sections 5953 and 5954, Bal. Code to be unconstitutional in so far as it it attempted to create liens against vessel- engaged in interstate commerce.

6. Defendants Except to the refusal of the court to declare Sections 5953 and 5954, Bal. Code to be inapplicable to the case at bar.

7. Defendants except to the refusal of the court to dismiss plaintiff's cause of action at the cost of the plaintiff.

Each and every of the above exceptions submitted and allowed by the Court this the 20th day of April, A. D. 1907.

MASON IRWIN,

Trial Judge.

Filed Apr. 23, 1907.

W. C. BIRDWELL, *Clerk,*

A. E. GRAHAM,

Deputy Clerk.

80

Certificate of Clerk.

STATE OF WASHINGTON,

County of Chehalis, ss:

I, W. C. Birdwell Clerk of the Superior Court of Chehalis County, State of Washington, holding terms at Montesano, for the County of Chehalis, said State, which is a Court of Record, having a common law jurisdiction and a seal, do hereby certify that the annexed and

foregoing is a full, true and correct Transcript of so much of the record and files in the foregoing entitled cause, No. 6330, as has been prepared by the appellant in said cause, and compared by me with the originals on file in my office, and certified to the Supreme Court, as the appellants transcript on appeal of said cause, as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court this 13th day of August, 1907.

[Seal of the Superior Court.]

W. C. BIRDWELL, *Clerk*,
By A. E. GRAHAM, *Deputy*.

81

Original.

In the Superior Court of the State of Washington, for Chehalis County.

No. 6330.

A. J. WEST, Plaintiff,

vs.

Capt. JOHN I. MARTIN et al., Defendant.

Filed Sep. 28, 1907.

C. S. REINHART, *Clerk*.

Proposed S. of F.

Filed May 6, 1907.

W. C. BIRDWELL, *Clerk*,
By A. E. GRAHAM, *Deputy*.

Filed as certified Jun- 19, 1907.

W. C. BIRDWELL, *Clerk*,
By A. E. GRAHAM, *Deputy*.

82 Service by copy of the within proposed statement of facts, subsequent to the filing thereof as shown by copy of file mark endorsed on said copy, acknowledged this the 7th day of May A. D. 1907.

JOHN C. HOGAN,
Att'y for Plaintiff, A. J. West.

In the Superior Court of the State of Washington for Chehalis County.

A. J. WEST, Plaintiff,

vs.

in MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe and Richard Roe, Defendants.

Defendants' Proposed Statement of Facts.

the above named plaintiff and to John C. Hogan, his attorney of record herein:

like notice.

that the defendants herein, Captain Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe and Richard Roe, propose as and for a statement of facts herein, the annexed transcript of evidence, taken by the stenographer and transcribed as the evidence in the cause. and the said defendants refer to and ask to have made a part of the statement of facts, all of the depositions, identifications and exhibits introduced in this action, or copies thereof, which were read and introduced in the above entitled action.

J. C. CROSS AND
W. H. BRINKER,
Attorneys for Defendants.

In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

ain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christensen, Ed. Hulbert, John Doe Sudden, John Doe and Richard Roe, Defendants.

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87 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSEN, CHAS. E. SUDDEN, E. A. Christensen, Ed. Hulbert, John Doe Sudden, John Doe, and Richard Roe, Defendants.

Statement of Facts.

This cause coming on for hearing on this 7th day of November, A. D. 1906, before the Honorable Judge Irwin, judge of the above entitled court, the plaintiff appearing in person and being represented by his attorney herein, John C. Hogan and the defendants by J. C. Cross *by J. C. Cross* and William H. Brinker, whereupon the following proceedings were had and testimony taken as follows, to-wit:

Mr. CROSS: Please the court, in relation to the supplemental complaint that was filed here the other day in which they claim additional damages, in order to avoid answering in the matter of pleading we would like to demur to that supplemental complaint or have it considered as made, of course our contention in that regard being that the damages complained of in that supplemental complaint would not be a proper element of damages in any event and in the event that the demurrer should be overruled, of course we would want an exception and answer it and in order to expedite matters we are willing that it may be stated in the record, that we should have a right to demur and the right to answer but our answering shall not be considered as a waiver of our right to be heard on the

demurrer or to take an exception against any order the court may make, we might formulate a demurrer if we can some time in the day or tomorrow so that the record will be complete accepting such order as your Honor will make in relation to the demurrer, 88 otherwise we ask that we be permitted to demurrer and we ask to be given permission to plead to it without prejudice, we prefer that the matter be disposed of before we proceed any further.

Mr. HOGAN: There was no order stated permitting the supplemental complaint to be filed and I think it unnecessary I think the feature of recovery in the—the only object of proposing the supplemental complaint was to reduce the recovery for loss of use to dollars and cents and to make it more accurate as to time they were out of the use, in the original complaint and we contend that the loss would be so much during the time that they would be out of the use of it after determining the time to make it more definitely by setting out what that time was, I have not counted on the supplemental complaint it has not be- permitted to the files by the leave of the court.

COURT: I supposed there was on Monday.

Mr. HOGAN: No.

Mr. CROSS: You didn't take the order that was granted?

Mr. HOGAN: No.

COURT: I understand you, that you didn't consider it or necessitate it at all?

Mr. HOGAN: No.

Mr. CROSS: So that the original complaint made and served is standing?

Mr. HOGAN: Yes sir.

COURT: Well his amendment on the complaint on Monday, there was an order taken?

Mr. HOGAN: Yes sir, an allegation of complaint. Just the allegation of the corporation.

Mr. CROSS: In order to preserve the record and be consistent we take the position, we object at this time to the introduction of any testimony in support of the complaint of plaintiff in this action on the grounds, for the reasons stated in our demurrer 89 to the complaint in the action, and for the record showing that we again repeat our objections and objections to the taking of any testimony on behalf of the plaintiff at this time and as to a ruling of the court and our exceptions and objections before any testimony is introduced—

COURT: That will be overruled. Grant an exception.

Plaintiff's Testimony.

E. L. CARPENTER, after being duly sworn, testified on behalf of plaintiff as follows:

Direct examination by Mr. HOGAN:

Q. Where do you reside Mr. Carpenter?

A. Aberdeen.

Q. And what is your business?

A. Civil engineer.

Mr. CROSS:

Q. What are your initials Mr. Carpenter?

A. E. L.

Mr. HOGAN:

Q. Are you holding any official position under the United States Government at this time?

A. I hold the position of civil engineer and United States Engineer Department.

Q. Are you familiar with the Chehalis River bridge at Aberdeen, known as the West bridge?

A. I am.

Q. Do you know when that was built?

A. I do.

Q. When was it?

A. It was last year, I don't know exactly the date, I know it was in 1905.

Q. Your office was making two drawings, the form for the War Department, for the erection of that bridge, have you them there?

A. Yes sir, I think they are.

Q. You may point them out and identify them Mr. Carpenter.

A. These are the papers. This is the original authority that was granted to the City of Aberdeen made on the 19th day of November, 1903, and then on March 18, 1905, Major Millis in writing to the Secretary of War—

Mr. CROSS: We object to this kind of testimony, your honor.

HOGAN: He is merely explaining.

Mr. CROSS: It may explain itself.

COURT: Sustain the objection.

Q. Does this document here which I hold in my hand, dated November 19, 1903, or purporting to be of the Secretary of War, does that refer to this bridge Mr. Carpenter?

A. It is not the original authority it is a copy of the authority.

Mr. HOGAN: I offer this in evidence as plaintiff's Exhibit "I".

Mr. CROSS: We object to the offer your honor for the following reasons:

1st. That it purports to be a permit granted to the City of Aberdeen.

2nd. It is nothing more than an unverified copy of the permit at the most and as to whether or not it is a true copy there is nothing on it — show there is no verification there is nothing to show that it is a copy of the original, it does show upon its face that it is not the original. So that there may be no mistake for the ground of our objection, the principle ground is that it is not a certified copy and it shows on its face that it is not the original and as it is determined,

is determined by the Government it is public records for persons desiring to have copies of those records, that is to have a certified copy or have the original, there is no authority for offering a copy made by the engineer outside of the department or for identifying a copy as for a copy outside of the Department, the War Department, any official paper can be verified only by the certificate of the proper officer, that does not purport to be either an original or certified copy and we think it is incompetent for the purpose or purposes that they introduce it.

Mr. HOGAN: This is his mode, your honor for getting such records, this is a regulation of the Department, of the War Department, the court will take judicial notice of the rules of the Department, whether it is or whether it is not, it is his mode of presenting the portion of the records so far as he took it.

Mr. CARPENTER: I would like to explain whether it is or whether it is not a certified copy.

That original authority was in the office in Aberdeen, the original is in the office in the City of Aberdeen and that copy was sent me at the time so that I would have a chance to see if the bridge was built according to that authority, and they didn't have that copy, that is it was in Aberdeen and I didn't have time to have it certified that is the reason that it was not certified. I retained a copy of it in my office instead of sending them to Seattle.

COURT: What is the purpose in offering these at all Mr. Hogan?

Mr. HOGAN: It is questionable whether under the answer the authorization is not denied, that probably it denied that the maintenance of this bridge was authorized by the Department, of the War Department in navigable water.

CROSS: The witness says conclusively that there is an original somewhere and his excuse for having this copy was not a reasonable excuse.

Mr. CROSS:

Q. The original permit Mr. Carpenter would be in the office of the War Department would it not?

A. I don't know as a general thing there is an original permit or permit signed by the Secretary of the War Department, it is forwarded to whom the authority is granted, a copy of that is sent to the local office.

Q. The War Department keeps the original of the permit they send out?

A. They keep it in Washington, D. C., they don't send them out to the local office.

Q. So that the original of these papers is in the Secretary of War's office?

A. I presume so.

Q. You don't know nothing to the contrary?

A. No nothing to the contrary.

COURT: That don't appear to be authenticated in any way, in reading the document itself, that it would seem to indicate that the original would be in the War Department and retained there, the original permit, if that is lost, as however suggested as shown, while possibly and if it was shown, that it was shown it was a copy of it, I think you would have to show that first.

Mr. HOGAN: I would have to call Mr. Clark from Aberdeen. We save an exception to the ruling of the court.

Q. Now Mr. Carpenter when did you receive this document?

A. Well that was shortly after, possibly three weeks after the permit was granted.

Q. Through what source did you receive it?

A. It came down from the Seattle office, it was in 1903; laid in the vault.

Q. It has been part of the record in your office since?

A. Yes sir.

Q. In the vault in your office?

93 Q. As a copy of the permit granted at that time for the construction of the bridge?

A. Yes sir.

Q. Has it been on file in your office ever since?

A. It has.

Q. Did you see the other one, the original delivered to the city?

A. I don't know whether I did or not, whether the original came that time or not.

Mr. CROSS: I object to that as being incompetent.

Mr. HOGAN: Inasmuch as this question is only incidentally involved I think it is competent.

COURT: Objection overruled.

CROSS: We take an exception to the ruling of the court.
(Marked Plaintiff's Exhibit "I.")

Q. There was no other permit?

A. No no other than that one.

Q. And what are these other papers Mr. Carpenter?

A. They are papers bearing on the—they are the plans.

Q. What is this November 13, 1903, what does that refer to?

A. That refers to these plans here upon which the bridge was completed.

Q. Is this an official document from your office?

A. It came from the Seattle office, in an original letter.

Q. These plans came with that letter?

A. Yes sir.

Q. Mr. HOGAN: We offer this letter dated November 30, 1903, as plaintiff's Exhibit "2."

Mr. CROSS: I object to the offer just made on the grounds that it shows on its face that it was not the original. The letter referred to in the offer speaks of the enclosure, which is proof of the War Department and the purported enclosure is nothing or has nothing on it or connected with it showing that it was ever authorized by the War Department and not being certified in any manner or form whatsoever the offer is nothing more than a letter from the Seattle office, to the witness, and does not contend to prove the allegations of the complaint that it was completed under the authority of the War Department that it was not an authenticated paper in any manner of form whatsoever.

COURT: I understand you are offering this now as the direction from the War Department to the Seattle office, and that this authority together with the permit and this specification is what in fact approved this bridge.

A. Yes, that plan and that letter.

Objection is overruled.

Mr. CROSS: Exception taken.

(Marked Plaintiff's Exhibit "2.")

Q. What are these other papers that you have Mr. Carpenter?

A. This is a letter in relation to the bridge from the Chief Engineer.

Mr. HOGAN: I offer this paper in evidence.

Mr. CROSS: We object to the offer your honor as *as* it is incompetent and as not having been properly identified and further objection is urged on the ground that it shows on its face that — has no relation to any bridge that Mr. West is to build, but to the contrary that their authorization is to the city of Aberdeen and not to any private individual.

Q. I will ask you if you know the signature to the certificate?

A. I do.

Q. What officer?

A. The chief clerk of the United States Engineer's office in Seattle.

Q. How did you receive it?

95 —. It received it by mail.

Q. For what purpose?

A. In answer to the subpoena.

Mr. HOGAN: We renew our offer.

Mr. CROSS: Then as a matter of fact you didn't have this in your office when that was served. It was served on the Seattle office and afterwards on you?

A. Yes sir.

Q. You answered the subpoena for the office?

A. Yes sir.

We object for the reasons above stated and as being incompetent and immaterial.

Court: Overruled.

Mr. Cross: Exception taken.

(Marked Plaintiff's Exhibit "3.")

Q. You were present when the bridge was completed?

A. Yes I inspected it a number of times.

Q. You were an office- of the government to see that it complied with—

A. Yes sir it did.

Mr. Cross: Without bothering the court to mention an exception to each ruling that the court might make we would like to have it understood that an exception whether specifically granted or not, is to be so understood. I understand that you are trying it as an equity case, and it would be unnecessary to make a ruling over these objections, the evidence, would be received subject to the objections if considered as an equity case but otherwise if tried by a jury.

Court: We will consider an exception taken to every ruling that is made.

Q. Referring to the map Mr. Carpenter permitting or permitted as Plaintiff's Exhibit "I," I will ask you what you know?

96 1st. What are the figures indicated running away from the middle of the Wishkah river to the south side of the river—
3-17-17, down to 10?

A. These are soundings, the water is less than 18 feet.

Q. Are those soundings, did you ever make soundings there?

A. Yes sir.

Q. Are those your soundings?

A. No.

Q. When did you make your soundings?

A. Last day of March, 1905.

Q. Are these soundings contained on this map from the War Department?

A. No sir.

Q. How did these soundings become to be made?

A. I don't know who had these soundings made, Mr. B. he made a map, I don't know when they were done.

Q. I now hand you a map and ask you what it is Mr. Carpenter?

A. It is a tracing from the harbor line.

Q. What do you know about the soundings indicated on that map?

A. I made those soundings.

Q. When were they made?

A. In March 29, 1905, the other soundings were made in the fall of 1903, those in the vicinity of the bridge, in 1905, March 29, 1905.

Q. Are you familiar with that location?

A. Yes sir.

Q. How does the depth of the water there now compare when those soundings were done, the last time, with the date after Mr. West's bridge was wrecked, was it more than it was then?

A. Not over a half a foot difference.

Q. What date was that?

A. The date the span went down.

97 Q. That map is in on a scale is it?

A. It is.

Q. What do these lines indicate with the circle in the center and two bear lines?

A. These are government period lines.

Q. State whether or not those are imaginary lines?

A. Yes sir.

Q. More on the other side of the river?

A. On both sides there are imaginary lines.

Mr. HOGAN: I offer this in evidence as Plaintiff's exhibit "4."

Mr. CROSS: We object to the offer your honor it is not properly identified and is surely not authenticated and it shows nothing. It merely is a tracing made by this witness and offered as an official paper, and surely an official paper could not be proven by the person coming in and merely making a tracing of such portion of it as he desired; confessedly that is only a section. And if there is such an official paper there is a way of getting an authenticated copy of that paper, this is not the way and for these reasons, the offer is entirely incompetent of the witness had testified that he had made an actual survey and made the plat on his data, that would be competent and we have no way of learning or ascertaining just what the official document would show and we surely could not be bound by the mere copy of an official document made by a person not in the possession of the official document.

Q. What do you know about the survey upon which this map now offered is based?

A. I made the survey.

Q. And where was this tracing prepared?

A. It was prepared in my office from the map that I made from the survey.

98 Q. Do you know it to be accurate?

A. I do.

Mr. HOGAN: We renew the offer.

Mr. CROSS: You mean that you made an official map originally?

A. Yes sir.

Q. And sent it to the War Department, a tracing of the original map, to the War Department?

A. Yes sir.

Mr. CROSS: You made an original map of your own and sent it to the War Department? That is the tracing?

A. Yes tracing to the War Department.

Mr. HOGAN:

Q. Keeping in your office the original?

A. Yes sir.

Q. The tracing that you sent was approved?

A. Yes sir.

Q. The one that you made in your office was not approved?

- A. The tracing is always sent for approval.
- Q. Then this is not the tracing from the map approved by the War Department?
- A. It is the tracing from the tracing and tracing from the tracing that were made that was sent to the War Department.
- Q. Is the approved map in your office or the Seattle office?
- A. No it is not in the Seattle office now.
- Q. And you were here for the Seattle office?
- A. I am, in this case, this map was not sent by the Seattle office.
- Q. When did you make that tracing?
- A. It was made in my office about two weeks ago.
- Q. You sent the original up to the office?
- A. No it is not in Seattle.
- Q. Where is the one that this one was made from?
- A. In my office.
- 99 Q. It is the original, it is the one that was originally made?
- A. It is a copy of the original the original is always retained in the chief engineer's office, this is a tracing of the tracing.
- Q. That is it?
- A. Yes sir.
- Q. And the original that is in the Seattle office is not certified by anybody on it?
- A. No.
- Q. And the original that is approved is in Washington City?
- A. Yes sir.
- Q. Now you say that this was made by the traceman in your office?
- A. Yes sir.
- Q. You are just presuming that it is all right?
- A. I compared it afterwards and saw that it was all right.
- Q. What do you mean by comparing it?
- A. I went over it to see if it was accurate.

Mr. CROSS: We think your honor that this is too long an arrangement too many intervening tracings between this and the original paper moreover it is misleading in that it purports to be a tracing from the approved map or the map approved by the War Department, when in fact the witness states that it is not that map at all but is a tracing that is made by that map.

Mr. HOGAN: The map is offered to show the satisfaction there and he testifies that the map accurately represents, and that the scale is based upon his survey.

COURT: If that is all it is offered for there can be no objection then for he may, you may receive it.

CROSS: It is offered as merely a tracing made from the survey made by himself is that it?

COURT: I understood it by counsel as making statement of the conditions of the water as to the soundings and depth and the location and the distance, if that is all it is offered for—

100 Mr. CROSS: As made by the witness himself and not as a copy of the official document?

Mr. HOGAN: Based upon his survey. We are seeking to prove satisfaction there.

Mr. CROSS: The court will grant us an exception.

Court: Yes.

(Marked Plaintiff's Exhibit "4.")

Q. Just what stage of the tide were these soundings made on Exhibit "4" referring to the water?

A. Mean low water.

Q. Do you know the pier of the bridge that was injured last May?

A. Yes sir.

Q. Which was it, which one?

Mr. CROSS: We object your honor to the assuming what they have have not proven as yet—

Mr. HOGAN: It is admitted in the pleadings.

Mr. CROSS: We don't admit that it injured the pier.

Q. I wish you would mark with a dot at the pier that was damaged, with the letter "A" (indicated). Now can you tell what the depth of water was to the south of that point and the expense of the water there?

A. I could tell by the soundings here.

Q. Take it on this side indicate it on the west side of the draw on the down stream side of the bridge, what would be the depth of water for several hundred feet back?

A. Back in what direction?

Q. South?

A. Well it would be several hundred.

Q. That is very indefinite.

101 A. About 350 feet towards the south.

Mr. BRINKER: I don't understand the location of the bridge.

Q. What do you mean by south, down stream?

A. No.

Q. What would be between 16 and 17 feet?

A. 350 feet to the south.

— 350 feet to the south?

A. Yes sir.

Q. What would it be four hundred feet to the south?

A. It would be at low water, do you mean at $\frac{3}{4}$ tide?

A. Yes sir.

A. It would be about, probably 14 feet, 14 to 15 feet, about 400 feet south.

Q. 400 feet south?

A. Yes south.

Q. Do you know the span of the bridge that fell in?

A. I didn't see the span fall but I was over shortly afterwards.

Q. Can you indicate on that map what span it was that fell in?

A. (From A to B that span. Indicated.)

Q. Can you locate the "G" street dock or wharf from this Mr. Carpenter?

A. Yes sir.

Q. Indicate it by the letter "c" (Indicated).

Q. What is the distance Mr. Carpenter from the "G" street wharf to the center of the bridge the swinging span, the center of the swinging span?

A. I- would be about 1700 feet about 1700 feet.

Q. About 1700 feet from the "G" street wharf to the bridge, the center swinging span?

A. Yes sir.

Q. Where is the Bryden & Leitch Wharf, does that represent it?

102 A. Yes sir.

Q. You may indicate that with the letter "D."

A. (Indicated.)

Mr. Cross:

Q. 1700 feet did you say Mr. Carpenter?

A. Yes sir.

Mr. HOGAN:

Q. Is the Aberdeen Lumber & Shingle Co.'s mill wharf represented there?

A. Yes sir.

Q. You may represent that with the letter "e."

A. (Indicated).

Q. Is the Railroad street bridge on Wishkah river represented there?

A. Yes the draw rest is.

Q. You may indicate that with the letter "F."

A. (Indicates).

Q. You haven't the passenger bridge represented there?

A. No.

That is all for the present.

Cross-examination by Mr. Cross:

Q. Did you make these soundings yourself personally Mr. Carpenter?

A. Yes sir. These three lines in the center of the bridge I did.

Q. Now that is about the way that the bridge is standing assuming that is north and south?

A. Yes sir.

Q. You say that you saw the pier that was knocked down.

A. Yes sir I saw the one after it was knocked down.

Q. When you speak of the pier that was knocked down you mean what?

A. I mean the span, the pier was out of sight, it was under water.

103 Q. Then you don't want to be understood as saying that "A" as you have marked it on this map represents the piers that was knocked down?

A. It represents the piers yes.

Q. Well on this map there is no piers represented at all. That is just representing, you could not put them at all on that scale, but just represent where the piers were so "a" is as you have it indicated, it is not for reference to the end or side of that pier any more than another.

A. No it represents the pier itself.

Q. When you first saw it however there was no pier there?

A. Yes.

Q. After it was run into?

A. Yes sir.

Q. There was no pier there, they were on the bed of the stream under the water, lying on their side?

A. Yes sir.

Court adjourned until 1:00 o'clock.

At 1:00 — court again called in session and the following proceedings were had.

Mr. HOGAN:

Q. I was thinking of one question on this examination, I would like you to give the distance from the swinging span of the bridge to the Bryden & Leitch Wharf?

A. It would be about 900 feet from the center of the draw span to the center of the dock.

Q. What would be the distance from the point marked "A" to the Bryden & Leitch wharf?

A. About the same distance.

Q. 1900 feet?

A. Yes sir.

104 Mr. Cross: Referring to Plaintiff's Exhibit "4" please state Mr. Carpenter the length of the draw span?

A. It was 307 feet over all or 137 feet in the clear in each side of the span.

Q. What is the length of the rest?

A. It is about 310 feet.

Q. Are there any dolphins which would sustain that length?

A. I don't remember if there were dolphins there or not for if they were they would probably extend 20 or 30 feet on the other end if there were any dolphins there.

Q. How long over all?

A. About 350 feet.

Mr. HOGAN: Speaking of the center pier?

A. Yes the draw rest.

Q. And the width of one draw rest is about what at the center?

A. In the neighborhood of 35 feet a foot or two less if anything.

Q. Do you know the distance from the bridge to the, to where the first line of soundings are on the west?

A. It would be beyond 220 and 250 feet.

Q. How long did you say the bridge is over all?

A. 307 feet that is the draw span.

Q. Is not it further from the bridge over this first line of soundings than the length of that bridge?

A. It is a little shorter there.

Q. I mean past the south pier and the swinging approach?

A. 240 feet.

Q. Now at that line you say the depth of the water is indicated on map?

A. Yes sir.

Q. And these soundings you made when?

A. March 29, 1905.

Q. Do you know what if any effect it has had on these tide lands west of the west and south beyond east of the bridge.

A. It has no effect that I know of.

Q. Do you know whether or not these soundings are now or were the 7th of May last the same as indicated last?

A. It must have been similar and they agreed very close to those soundings.

Q. How far is it from the line immediately west of the south pier the bridge to the tide lands, that is the lands above mean high tide?

A. Above mean high tide?

A. Yes sir.

A. 700 feet about.

Q. What is the width of the tide land room beyond the meander and the line of mean high tide.

A. The meander line is not given there only the water line and line of mean high tide.

Q. From the line of mean high tide and the lower water mark how far?

A. About 235 feet.

Q. From the low water mark to the end of the bridge where the swinging span goes to the south side, is how far?

A. Well about 300 feet from the bridge. About 420 or 30 feet.

Q. Now the depth of the water from mean low water mark and end of the pier at a distance of so of 300 feet of the line of the bridge is how much?

A. It varies from $19\frac{1}{2}$ feet of the line west of the bridge to zero at the low water mark.

Q. These soundings that you have indicated are on what stage of the tide?

A. Mean low water.

Q. How far above mean low water is that?

A. It is above mean low water.

Q. How much below?

A. Probably $7\frac{8}{10}$ feet below.

Q. How do you determine what stage of the tide did you take the soundings?

A. I don't know.

Q. These figures that are on this map are made by calculation, by

A. No made from observation.

Q. Do you know whether or not the wharf at the letter "D" has effected the formation on the tide lands between the bridge and the wharf since the bridge was built?

A. Not under my observations.

Q. You say you had taken soundings to determine where the piers were after the bridge fell?

A. Yes sir.

Q. What position were the piers in?

A. The south one was lying in a position——

Q. They are both south?

A. I mean the west one was lying almost due north and south and the east one was lying pretty nearly east and west about 40 feet up stream from the line of the bridge then the west one was lying on a line of the bridge, pretty nearly and the east one was lying right angles of the bridge.

Q. The top of the pier in what direction?

A. I presume the top was lying east probably I could not tell from the red line.

Q. Did you try to tell which was the top and the foot?

A. No.

107 Q. I believe you stated that the distance from the "G" street wharf to the bridge, the line of the bridge was about 1700 feet?

A. Taking the center of the draw rest.

Q. To the center of the "G" street dock it is about 1700 feet?

A. Yes sir.

Q. How far is it from Harrison's wharf to the draw span, the north end of the draw span?

A. About 220 feet.

Q. How far do you say it is from Bryden & Leitch's wharf to the draw span?

A. About 920 or 925 feet.

Q. That would be from the center of the north line of the dock?

A. Yes sir.

Q. How far from Harrison's?

A. About 220 feet.

Q. Now how far is it from the end of the south swinging span to the ferry landing on the east side of the bridge?

A. 490 feet.

Q. Do you know whether or not there are any dolphins or piling at the other end of this pier that the south end of the swing span rests on?

A. I don't know at that time but were not there originally.

Q. Were not there originally?

A. I could not say positively, come to think about it, I think there was when the bridge was first completed.

Q. Did you make these soundings that are indicated on Plaintiff's Exhibit "2"?

A. No.

Q. Referring to plaintiff's exhibit "2" was there anything of that

8 exhibit which would indicate the depth of the water from the southerly resting pier of the swinging approach to the low water on the south side?

A. Yes the soundings are shown on that map.

Q. What is the depth or do you know at what stage of the tide these soundings were made?

A. No I don't know.

Q. Referring to plaintiff's Exhibit "I" what does the irregular line toward the center of the stream indicate, the straight line and the dots?

A. Is a two foot contour.

Q. Meaning by that what?

A. All on that line 12 foot of water.

Q. How far is that from the south pier?

A. I don't know, the pier is not indicated there.

Q. How far is it from the 12 feet contour, referring to the south pier of the resting pier?

A. About 260 feet or 255 feet.

Q. Mr. Carpenter will you please refer to Plaintiff's exhibit "4" and indicate to the court how far it is from the south resting pier at a distance of say 250 or 300 feet from the line of the bridge and where the water would be 14 feet in depth?

A. At what stage of the tide?

A. Mean low or low water.

A. About 240 feet.

Q. 240 feet?

A. Yes sir.

Redirect examination by Mr. HOGAN:

Q. Referring to Plaintiff's exhibit "2" you were asked in relation to that whether the soundings indicated were taken at any certain stage of the tide, you were asked at what stage they were taken, and you referred or answered that you didn't know, I will ask you this question, then at what stage of the tide they represent the soundings?

A. It doesn't represent on the map what stage it was, I think.

Mr. CROSS: We object then to what he thinks unless he can state sure.

Q. Then your answer is you don't know what stage of the tide that represent the soundings?

A. No I can't state from the map at all.

Q. What is the character of the bottom of the river from south the south pier of the bridge?

A. Soft.

Q. What material is it composed of?

A. Tide mud, the lead will go into it four or five inches.

Q. Soft mud bank?

A. Yes sir.

Q. Can you speak from memory the length of this south span of the bridge that you found in the river?

A. 261 feet.

Recross-examination by Mr. Cross:

Q. I understood you to say Mr. Carpenter that you made no examination which you say would indicate whether the piers were broken off or whether they were pulled out?

A. It would not determine it in the lead, we used a lead and first we could not find it as it was sunken in the mud about a foot and a half.

Q. From your examination could you determine whether it was the top of the pier, west pier that had fallen or the other end?

A. No I could not tell which one.

Mr. SIMMONS, being duly sworn for and on behalf of plaintiffs, testified as follows:

Direct examination by Mr. HOGAN:

110 Q. Where do you live Mr. Simmons?

A. Portland, Oregon.

Q. What is your business?

A. Contracting.

Q. What character of contracting work are you engaged in?

A. Bridge building and general contract work.

Q. How long have you followed bridge building?

A. Since 1882.

Q. What is the name of your company?

A. Pacific Bridge Company.

Q. Were you familiar with the Chehalis river bridge owned by Mr. West at Aberdeen?

A. Yes sir.

Q. Did you build that bridge?

A. Yes our company did.

— About where was it built, Chehalis river?

A. Yes sir.

— About what time was it built?

A. It was finished about the first of September a year ago.

Q. These drawings which I hand you now Mr. Simmons represent that bridge?

A. They do.

Q. Are these drawings from which the bridge was built?

A. No it was from the field plans used by the foreman in constructing the bridge.

There are other detail plans that are in the bridge shop in our office in Portland giving the detail of the materials.

Q. This however is the general plan of the bridge?

Mr. CROSS: We object to the leading form of the question your honor, I think it is hardly fair.

111 Q. These plans represent the bridge as constructed in this general outline?

A. Yes sir.

Mr. HOGAN: I offer this in evidence.

Mr. CROSS: You say these are simply working plans, well they are plans to guide the foreman in the erection of the bridge they are not the original plans that were given for its construction?

Mr. HOGAN: These are supposed to give the main points in the construction of the bridge.

Q. You say your original plans are in your office in Portland?

A. Well the detail plans those detail plans are the plans given you for the construction of the bridge.

Q. These were not given you you made them yourself?

A. Yes sir.

Q. You say that the plans that were given you to guide you in the construction of the bridge are not here, the plans that were given the company for the construction of the bridge is not here?

A. No sir.

Q. And your company have just made up these sheets?

A. Yes sir to avoid confusion, the foreman in the field.

Q. Of course you don't make these yourself?

A. No sir I don't know as to whether or not they are exact copies the originals.

Q. You don't know except as given to you?

A. I know the man who made them, I know the bridge was built on these plans.

Q. The question isn't Mr. Witness, as to whether or not the bridge was built on these plans but as to whether or not these are the plans you received for the erection of the bridge?

Q. We didn't receive any we make the plans and submit a bid on them.

Q. Submit a bid on them?

A. Yes sir.

2 Q. And those plans you made and submitted the bid on are not here?

A. Not the details these are the blue prints.

Mr. CROSS: We object your honor to the offer on the grounds that appears from the testimony of the witness that the original plans for the construction of the bridge are in the office of the company which this witness represents; that these offers are simply copies of something else and are not copies of the plans as plans but copies of reproductions of those plans; under pretense that the bridge was built on these plans taken as a whole, they represent the whole bridge; furthermore, he doesn't, or it doesn't appear that this witness ever identified these as being exact copies of anything except as told to him by some other person. The best evidence is not yet produced, the material evidence; it is immaterial about these working plans, that the contractor may have up for his own use on the field as proving or contending to prove that the bridge was built according to plans approved by the War Department.

Q. Are these the identical plans and drawings used by your foreman in the field?

A. Yes sir.

Q. I will ask you if these are the identical papers you submitted to Mr. West on your contract for the construction of the bridge?

A. Yes sir.

Mr. HOGAN: We ask that these be marked Plaintiff's Exhibit "5".

Mr. CROSS: We object your honor for the reason above stated.

COURT: Objection is overruled.

Mr. CROSS: Exception.

(Marked Plaintiff's Exhibit "5".)

Q. You may state Mr. Simmons, what were the different plans of that bridge, now would you designate them and what were they?

A. Two fixed spans, and a swinging span and other span 118 foot long and the other 260 foot span and the swinging span 200 foot span, on each side of the river was a short span 118 foot span.

113 Q. And the 260 foot span?

A. South Aberdeen side.

Q. How was the north end of the south span the 260 foot span?

A. Upon center piers, filled with concrete and piles perfectly driven.

Q. What were the dimensions of these piers?

A. About 5 feet in diameter, and 4 and 5 and they were lashed together by rods and struts, on the right hand side of this drawing these are the only piers on the south span on the right hand side.

Q. What was that south span composed of that 260 feet span, what was the material?

A. Wood and metal known as a combination span.

Q. Are you familiar with the cost of bridge work?

A. Somewhat.

Q. Were you familiar or did you know or do you know now what the cost of bridge work was in May, 1906?

A. Yes sir.

Q. Do you know what the price was of bridge work at that time of that character?

A. Yes sir.

Q. Do you know what the value of that south span was at that time?

A. Yes sir.

Q. What was the value?

A. About twenty thousand dollars.

Q. That 260 foot span?

A. Yes sir.

Q. Do you or have you had knowledge of that span going down, did you have anything to do with the reconstruction of it?

A. For whom?

Q. Mr. West, A. J. West, do you know what the cost of rebuilding it was?

114 A. Yes sir.

Q. I will ask you if you have a statement of that cost?

Mr. CROSS: We object your honor — this form of proof, the cost as they may have it.

Mr. HOGAN: I will ask another question.

Q. State whether or not *is* was reconstructed by the old plans?

A. Yes sir the design was followed. It is the value of the reconstruction compared with the value at the time of its original construction.

Mr. CROSS: It is immaterial he would not be responsible for the cost of reconstruction.

Mr. HOGAN: If we get something for redress they should charge you for it.

Mr. CROSS: I don't think that is a proper way to prove damages.

Mr. HOGAN: That is the very best way of proving the cost of restoring it.

Mr. CROSS: I don't think so your honor.

COURT: I think you should show more clearly that it was reconstructed in the manner and form of the same plans and that it is similar or alike in material.

Mr. HOGAN: If the materials are the same I don't mean the same identical materials being used *by* the same character as before, the same class of material was used in the reconstruction. And how the span now compares as before the injury.

Mr. CROSS: We object to the question as being indefinite.

Mr. HOGAN: State what if any difference there is?

Mr. CROSS: We object to that your honor he can state how it was before but as to how it is now we take it as immaterial, but if the court should hold that it is material as to how they have reconstructed it then we take it that they should prove it, if at all, by
115 reasonable cost and not by what they have paid out of their contract, that would be no feature of damages your honor.

COURT: That is subject to cross-examination and I think it is proper for them to prove, that is to show the full cost show that they reconstructed the bridge from the same plans as before, and that it was the same class of material, same value of material and what the cost of reconstruction was as indicating the damages to them.

Mr. CROSS: That is assuming your honor some points they didn't confess that it was built on the same plans.

COURT: I think that they should show that it was reconstructed on the same plans, were they Mr. Simmons?

A. Yes sir the same class of materials and along the same general plan as the original plans.

Mr. HOGAN:

Q. And the materials of the same value of the same class?

A. Yes sir I think the wood work cost more this time than before. I don't know for certain, the difference.

Q. I will ask you then Mr. Simmons to produce the statement which you have of the cost of reconstruction, the statement of it, the cost of the reconstruction.

Mr. HOGAN: I offer this in evidence as plaintiff's Exhibit "6."

Mr. CROSS: Where was this made up at Mr. Witness?

A. At my office.

Q. In Portland?

A. Yes in Portland.

Mr. HOGAN:

Q. It was taken from their books of account?

A. Yes sir from statements that were created by this work.

Q. Did you reconstruct this bridge under contract for a specific sum?

A. No sir. I would not reconstruct it that way.

116 Q. This statement of material that you have here is material that you furnished yourself as bridge company?

A. Yes sir, purchased in Aberdeen and other places for that work.

Q. So that these items are of materials and labor and so forth you made up from your expense roll?

A. Yes sir.

Q. For instance I see here copy books telegraph expenses and envelopes?

A. Yes that is material that our foreman purchased in Aberdeen.

Q. Coal oil and things of that character is the cost of the board of your men in this statement?

A. I think the board of one man is not there, that is part of his salary.

Q. Did you hire the men or did Mr. West hire the men?

A. I hired my foreman. I hired a portion of them and he a part of them.

Q. Did you pay them or did he pay them?

A. He paid them. I have the checks, receipts of the bank checks.

Q. You have originals for all these you claim?

A. I know I have.

Q. You have originals?

A. Yes sir.

Q. Kept all you say in your office in Portland?

A. Yes sir there are there now all these items of the postage stamps outside of the stationary bill or stamp bill, I have all the receipts.

Q. You say this represents the cost of rebuilding this bridge?

A. That long span.

Q. What was the size of the pier that you built?

A. Eight foot in diameter for $\frac{2}{3}$ and four feet in diameter for the remaining one-third and 42 feet long.

117 Q. In this you have the cost of building dolphins out at the ends of the bridge?

A. I think so yes sir.

Q. There were no dolphins there either on the old bridge?

A. No sir.

Q. So that when you say you built, recompleated this span on the plans of the old plans you meant as a general outline but not in quantity of material or size of the material of the structure.

Q. In the spans the same sizes were followed as in the original casings, in the cylinders more than two centimeters—

Q. Not two centimeters in diameter, the old was five, when no change was made, that is one section at the top?

A. No about three sections.

Q. 5 feet at the top?

A. One-third of 42, about 14 feet.

Q. Going to the matter of piling how many were in the old one?

A. Seven.

Q. How many in this one?

A. About ten.

Q. I will ask you if there isn't thirteen in one and fourteen in the other?

A. There might be.

Q. Are you speaking from knowledge?

A. I would have to examine my material.

Mr. CROSS: We object for the reason that this shows that this span was not rebuilt by the plans of the old span and the court can't now the difference of the cost to rebuild or the building the eight foot cylinder, and it would only contend to confuse the mind of the court.

Court: We think that former objection should be sustained and they should be required to prove what the cost of rebuilding the old span would be or what the damages to the bridge would be for the cost of that span, not for the cost of rebuilding it in a different way on a different scale, it will be observed that there are a great many matters here; that are not proper items of expense and would require the court to segregate them. The way you charge and how much is not proper.

Mr. HOGAN: I will clear up some points asked by Mr. Cross. I would like to ask him some more questions in relation to the piers and to how they were constructed.

Q. Mr. Simmons you say the lowest part of the pier in the water larger than before?

Mr. CROSS: We object.

Court: Sustain the objection.

Mr. HOGAN: It could not be done any other way.

Court: You could show the difference of the cost between the new one and the old one.

Q. To replace it in the only practical way would be to take the iron that is broken and weld it, it is not exactly the same?

A. When the pier or two cylinders tipped over the piers in the river tipped over, the piles were broken close to the river bed and it was necessary in reconstructing the pier to use cylinders of larger diameter so that we would be positive that we could get new piles or supports in the pier. We wanted to be positive that these piles could go down to solid foundation and not be sunk over these stubs from the old pier that is the reason.

Q. Is that the only reason?

A. Yes sir.

Q. If the stubs of piling would not have been there could the same diameters been used?

A. They would have used the same diameters had it been possible to have driven the piles.

119 Q. That was the only reason for changing the size of that pier?

A. The only reason that was the reason.

Q. You may state whether or not that was the only practical safe method of reconstructing it?

A. That was the best method for that form of pier and more economical of all piers.

Q. You say you had vouchers in your pocket for these expense bills?

A. Yes sir.

Q. You may produce them Mr. Simmons and I offer these vouchers in connection with the testimony of the witness.

Mr. Cross: We add the same objection as we made before; excepting of course on the ground that they have not offered to introduce the originals; and as showing damages we think it immaterial and improper as showing the measure of damages.

Court: You may receive them subject to the objection.

(Marked Plaintiff's Exhibit "6.")

Q. Some controversy had developed Mr. Simmons as to the necessity of dolphins protecting the piers, I will ask you what you can say with reference to the dolphins, such as are at the north end of the south span?

A. Why I should consider the dolphins things for keeping off drift wood and logs and materials of that kind, I would think it would be there mostly for that reason, to protect that pier, from logs and drift wood.

Q. How as to vessels?

A. It depends upon the head way the vessel would have when it hit it.

Q. Do you know of any similar bridges in the Columbia river?

A. Yes sir.

Q. You refer to swinging bridges?

A. Yes sir.

Cross-examination by Mr. Cross:

120 Q. What is the reason why you built these piers or these dolphins at each end of these piers in the reconstruction of the bridge to protect the piers against the jams and logs or anything loose that have a tendency to drift against the piers, the important — was the protection from the logs. Whatever protection the piers would have from the the jams of logs would have the same against the vessels?

A. It depends upon the headway, a vessel that was going a mile an hour. I don't think it would cut much figure.

Q. Do you think a vessel would strike a pier or dolphin with a greater force than a large raft of logs?

A. I think so.

Q. Had you ever had any experience along that line?

A. What line?

Q. The drifting of logs against dolphins, the striking the dolphins with logs in tow?

A. Yes logs in tow or piling in tow.

Q. Take a raft of logs of say from one to three hundred thousand feet have you any idea as to the force which such a raft would strike, it being under ordinary tow?

A. Yes I think I do of what would be produced.

Q. State what in your judgment would be the effect?

A. I think the logs would spill out of the raft.

Q. If not then what?

A. They would hang up on the dolphins or might carry them away, the correct speed and raft would have to be considered.

Q. About how many piling did you put in each of those dolphins to protect these piers when you rebuild?

A. About 16 or 18.

Q. Isn't there 19 piling in each of these dolphins?

A. I say 16 or 18, I have the notes on that.

Q. Which in your judgment is the stronger a four foot
121 cylinder here or that 19 piling dolphin which you say is there?

A. I think the cylinder piers are the stronger.

Q. On what do you base your judgment?

A. Well there is two groups of piling. They have considerable base and these piers are filled, these cylinders are filled with concrete which make a solid mass and these two cylinders are braced and make a very solid and substantial pier or known to resist a reasonable blow.

Q. Do you know what the diameter of the dolphins what you drove in this original piers or piles I mean or cluster of piles?

A. Yes sir. They were as near five feet as we could get it, I mean a single piling would take, they average about 20 inches. Might be 22 just according to what they could get into the—

Q. How many in the original piers?

A. Seven piles.

Q. Seven piles twenty two inches in diameter would make a circumference or how much?

A. Well you can drive them close together.

Q. Assuming that they were close together could you get that in a five foot cylinder?

A. Yes sir.

Q. Would not they fill it completely?

A. Well we try to get as much as we can, just so as to fill it up. So as to connect it with these cylinders, when the cylinder was drove over these piling it was and has a tendency to force them together.

Q. Were you there when those first cylinders were put in?

A. Yes I was there two or three times a month.

Q. What is the depth of the water there?

A. As I remember it about 22 feet.

122 Q. Do you remember the length of the casings that were used there?

A. About 45 feet.

Q. The iron casings?

A. Yes sir.

Q. 45 feet?

A. About 42 feet I think.

Q. How far is it from the water up to the bridge?

A. Well that would vary according to the tide.

Q. Where you sawed them off?

A. 2 feet it was supposed to be two feet below extreme low water.

Q. So that there was how many feet of piling in the casing?

A. About 26 feet.

Q. Were you there when the cement was put in?

A. Yes sir not all of it some of it.

Q. How did you put it in?

A. Mixed it and dropped it in with a bucket.

Q. Already wet?

A. Yes sir dampened.

Q. You put seven piling six inches in diameter or put it in a five foot casing?

A. How.

Q. And something would find its way down?

A. That was the expectation that some of it would find its way down there. They knew it would. I have seen many cylinders of that kind and I know that stone, sand and cement always goes to the bottom, I know it went down there.

Q. Is there any surface at all. That is not covered by these piling?

A. Yes sir.

Q. You had space inside of that 5½ feet cylinder that was not covered by these piling, or occupied by them.

A. I think an area of about three piles.

123 Q. Do you think you could have gotten ten piles in each cylinder?

A. No if you had of filled up with piles you could have driven them into the space that which afterwards became concrete.

Q. Will you indicate with the pencil on the sheet of paper about how the piles would look after you had them driven, could you not?

A. Yes sir.

COURT: Just what your purpose of going into that so particularly—it would seem to me that the paper showing the cost of these dolphins and diameter, whether or not the expense can be allowed as a part of the cost—anything that would be expended for the purpose of putting in a better bridge than before would not be considered.

Mr. Cross: We are making inquiry of this witness as I understood that the witness was to be excused to show that it would not be proper for when asked questions in chief, that would not be proper in cross examination. If these dolphins are simply put in there to make a better structure, than before, I think it should not be allowed.

Mr. HOGAN: We are willing to concede that the cost of dolphins

should be deducted from this bill. I was trying to figure what way to get at it. It looks to me now that the dolphins could not be allowed.

Mr. CROSS: No your honor I am talking about the original piers; these piers never were completed, they were simply stuck in the mud and had no power of resistance.

Q. Have you indicated about how you arranged it, your piling as you have it?

A. Yes sir.

Court: If you drive piles down into the cylinder, I see they are piling with concrete, all right.

Q. Now you assumed when you built these piers that this wet mud or concrete you put in there would go down between these openings?

124 A. Yes sir.

Q. And as to whether or not the concrete did go to the bottom of this casing into the river, and fill up from the bottom of the river, you only conclude from your past experience?

A. I don't know anything about this particular casing. I base my experience on other casings similar casings during my past experience.

Mr. CROSS: Then there was how much of this piling put in the casings?

A. About 26 feet.

Q. About how much of them went down in the mud?

A. They were long piles.

Q. Do you remember as a matter of fact just how long they were?

A. I think they were 60 feet long.

Q. Do you know how much they cut off the top?

A. About eight feet.

Q. Were you there when they cut them off?

A. No sir.

Q. Well how do you know then?

A. Well Mr. — told me to the——

Mr. CROSS: We ask to have his answer to that question stricken as not being proper, we don't ask you for what some one else has told him but ask what he knows.

A. We put the largest piles we could get into the pile driver and we drove these piles so as to have a good foundation and we bought them long enough so as to not be held up in the work.

Q. You don't want, or don't seem to want to state to the court how much was cut off?

A. No sir, not when I was informed.

Mr. CROSS: Let the court give us a ruling on our application to have the answer stricken.

125 Court: In the case of, it does not seem necessary to have the question stricken out, we will not consider it.

Q. I would ask you if you can drive a pile on the cement.

A. Yes sir it is a very good thing to do.

Q. Were any of the piling in the original construction of this bridge driven on the cement?

A. Not in these piers.

Q. Were they driven on the cement on the rebuilding?

A. No sir.

Q. The diameter of the casings on the rebuilding was, you said, eight feet?

A. Eight feet in diameter, that gave us about a row of piles outside of the stubs that were there.

Q. Were you there when they were driven?

A. I was there shortly after they were driven.

A. Were you there when the tops of them were cut off?

A. No sir.

Q. Do you know the dimensions of these piles?

A. About 22 inches, some were 20 inches, some 22 inches, some 18 inches.

Q. Did they try to get them as near 22 as they could?

A. Yes sir.

Q. Referring to 22 inch or 20 inch piles you had about 18 or 19 piles in these casings? In the new ones?

A. Yes sir.

Q. Did you have any dolphins at either end of these piers on the south side where the bridge rests when you originally contracted and constructed it?

A. Only during construction and they were there as temporary measure only.

Q. Did you build these to protect the piers while you were there?

126 A. They were built to form a staging so that we could assemble it is what you would call scaffolding. They were there when we commenced and when we finished they were out?

Q. The dolphins or the piling out at well?

A. Yes sir.

Q. So that when you left it the piers were exposed so that whatever went along the river might hit them?

A. We didn't contract for anything of that kind, I don't know.

Q. You don't know whether or not the piers were built afterwards or not?

A. No sir I don't.

Q. Now turning to the structure itself Mr. Witness in rebuilding it did you use the old iron?

A. We used all that was possible to be used, or brought into service.

Q. What was to the old span that you didn't use, some of the timber, some of the iron rods and bars?

A. I didn't use any, to amount to anything, just part of it.

Q. Where are those timbers, rods and piers that you didn't use?

A. Some is down there yet, and we sent part of it to San Francisco.

Q. Such as you couldn't use?

A. Yes sir, I am not familiar with the identical parts of the sizes,

we sent to San Francisco but I sent some similar material from Aberdeen for use there.

How much of the wood work did you have to replace?

I could not give the items, we bought part from Mr. Leitch.

What became of the old timbers, did you throw them over?

Anything that we could not use, some of the timbers were battered and splintered and broken so that we just had to buy new material for that purpose.

Q. Was this material that the bridge was originally built of new material?

When it was originally built it was new.

When was it originally built?

You mean this span?

Yes sir.

In 1887, or about then.

So that this material had been in use for bridge purposes since

Yes sir.

It is known as the old Morrison Street Bridge in Portland?

Yes sir.

Had it been wrecked there?

Not in a direct sense of the word it had been moved it was mended.

Are you sure it was not wrecked?

No it had to be removed for they had to have a larger roadway for street cars.

Are you speaking authoritatively?

I know all about it I built the new bridge I am speaking from authority. I had an interest in the street car company that moved over it.

Did your company once own this old bridge?

Yes sir and operated it as a toll bridge.

Did you sell this bridge to Mr. West?

Part of the bridge.

Did you sell this part that fell into the Chehalis river?

Yes sir.

Q. Now when you figured the value of that span you figured it in the line of new material didn't you?

A. Yes sir.

It was a wooden and iron combination?

Yes sir.

So that this bridge has been dismantled in Portland and moved to Aberdeen, put together here?

Yes sir part of it. We built a good bridge for ourselves in Aberdeen.

You didn't buy or sell at that time?

No sir not at that time.

They didn't — they would buy it?

I could not say as to that?

Q. Well now considering the value of this bridge Mr. Witness are you basing your value upon what you bought and sold it for?

A. No sir. I supposed that to be the par value of the cost of the bridge to-day.

Q. What was that whole bridge worth?

A. \$70,000.00.

Q. The whole bridge?

A. Yes sir.

Q. I mean the part that was dismantled and sent up from Portland?

A. Yes sir.

Q. What is the swinging span worth?

A. About \$40,000.00. Its foundation and pier construction.

Q. Now when you say that bridge is worth \$70,000.00 do you mean as it stands in the river?

A. Yes as it is ready for business to-day.

Q. As — is, ready for business it is?

A. Yes sir.

Q. A bridge in the rough, ready to be constructed or placed into position would be worth how much?

129 A. I would not attempt to say offhand.

Q. You have bought and sold it haven't you?

A. Yes sir.

Q. And you have not an idea as to what it is worth?

A. I would want to figure on that a little bit and labor cost what the labor would cost and putting it up, it is worth \$70,000.00 less the cost of putting it up and the material.

Q. The material is the bridge?

A. I mean the foundation, that is what I mean by materials.

Q. You say the value is \$70,000.00 less the cost of putting it up and including the foundation?

A. Yes sir.

Q. What is the other end of the bridge worth?

A. The small span?

Q. Yes sir.

A. Six or seven thousand dollars I guess.

Q. And what did you say the value of this long span is?

A. About twenty thousand dollars.

Q. How do you make the difference?

A. Well one is 118 and the other is 260 feet long and the values are not in a direct proportion of the length, it doesn't figure that way, the material differs in the sizes. The cords are different.

Q. Referring to your plans could you indicate the difference between the sizes of the cords on the long span and the other span?

A. In the central panel of the other span the lower cord are four inches by $3\frac{7}{8}$ inches and the panel length is fully 17 feet and 6 inches and the small panels in the long span they have $2-4 \times 1-\frac{3}{8}$ and $2-4 \times 1$ inch and the channel length is 21 feet and eight inches. So that by the difference there is, is 2 extra cords. I mean the standing corresponding cords in the long span are less than they are in the short span but there are two small cords.

- Q. Do you think these extra cords in that extra panel would make \$16,000.00 or \$14,000.00 difference?
- A. When you have six or eight panels in one span and twenty in another span it would and the timbers are larger increased from where 16 x 18 some cords against 12 x 14 in the other one.
- Q. How many panels do you say there are in the short span?
- A. Six.
- Q. How many in the long span?
- A. 12.
- Q. So that one is just twice as long as the other and——
- A. Yes the height of one is 20 feet and the other is 42 feet.
- Q. Height from what?
- A. From the floor.
- Q. That is just the upright pieces?
- A. Yes the vertical pieces.
- Q. Made out of wood?
- A. Yes 38 inches by 43 feet.
- Q. So that this bridge had been in use since about 19 years at time of this accident?
- A. Well from 1887 to February, 1905.
- Q. And it is still in use?
- A. Yes, I presume they are using it now.
- Q. What is the life of such a bridge as that?
- A. The life of a bridge depends upon the life of the wood parts.
- Now such a thing as the iron portion of the structure giving and becoming worthless from rusting or or any other cause, can you say as to that?
- A. I never heard of one giving way, electricity or things of that kind may have effect on it.
- Q. Have you ever had experience of these iron structures?
- A. No I have not. I know of bridges that have been in use for 18 years, extension bridges.
- Q. Bridges that are under constant strain?
- A. Yes are strained all of the time.
- Q. Just the same as if it was a steel bridge?
- A. Yes sir.
- Q. Do you know what the name of the bridge was in Portland that over and caused people to receive great injury some few years ago?
- A. The swinging span was left open and the street car run over it.
- Q. Was not there a bridge that gave way with the crowd?
- A. That was a floor beam of the Morrison street bridge.
- Q. That is what I thought. That has nothing to do with the selling of this bridge, that it was out of repair in Portland?
- A. No sir when it was removed it was not repaired.
- Q. What caused that catastrophe?
- A. It was an armless man——
- Q. I don't mean that——
- A. Why the floor beam had decayed at the floor and there were many people on that certain point.
- Q. How long ago has that been?

A. About three years ago.

Q. How long ago?

A. Three or four years just about three years. Since the ten cent theaters started.

Q. After this was it that the city concluded to change bridges?

A. A year and a half or two years.

Q. You say that this form of pier is economical?

A. Yes sir.

Q. When you say that you mean that is is a cheap pier?

A. Not necessarily cheap.

132 Q. Do you know whether or not it is customary, a rule in bridge construction to protect this class of piers with dolphins?

A. I have never seen them protected until I came to Aberdeen.

Q. You speak of reco-structing the Morrison street bridge and building a new bridge is it built with this kind of a pier what is the timber?

A. About 12 feet.

Q. 12 feet timber?

A. Yes sir.

Q. Are you able to state from your knowledge of bridge construction the certain comparative pressure of this long span and the short span?

A. Pressure?

Q. Yes on the casings.

A. The weight on it? The weight of it?

Q. Yes.

A. Why I would have to figure that over, the piers on the short span are—

Q. What is the diameter of the piers on the short span?

A. Same as the north span or the long span, the piers and casings at each end of the draw span were the same.

Q. Could you give us an idea as to the weight of these two spans or these two pressures.

A. I don't like to guess in that matter.

Q. Have you any date, could you make a calculation?

A. No sir I am not prepared.

Q. Would it be asking you too much as to make us one in the rough?

A. Not a bit I would be glad to furnish it.

Q. We request that you make such a calculation in time that we may have it before you go away.

A. I don't know as I could do it to-day I have *have* all the weights and estimates at home. I could send them to the court if you want them.

133 Q. Give us a memorandum of them.

A. Yes sir give you the weight of the two spans.

Q. Well if you will please do so we will receive it for whatever good it may be for its verification.

A. All right.

Q. When you speak of this or its having been the old Morrison

street bridge of Portland Mr. Simmons did you refer to the iron work?

A. Yes sir.

Q. Only the iron work?

A. We didn't bring any of the wood work here to Aberdeen, just the metal.

Q. Was the beam that you spoke of as having decayed wood or iron?

A. Wooden beam.

Q. State whether or not all the wood work was put in new when it was constructed in 1905, in Aberdeen?

A. All of the wood work was new, and I never saw a better lot of wood out of a saw mill as was used in that bridge.

Q. What could you say as to the metal portion of the bridge?

A. I consider the metal of that entire bridge good for 35 or 40 years.

Q. Are these same kind of cylinders and piers used very extensively do you know?

A. These cylinders piers is used in 95% of the cases. The Northern Pacific People or any other corporation around this part of the country use them.

Q. Could you estimate Mr. Simmons without itemizing it, the cost of those dolphins protecting these piers that were put in there, assuming that they are to be deducted from this bill what would be a reasonable allowance for them?

A. I think \$600.00.

Redirect examination by Mr. HOGAN:

Q. Mr. Simmons I will ask you what your arrangement or contract was with Mr. West for restoring or rebuilding that damaged span?

Mr. CROSS: We object to that as not being proper mode of proving the value by agreement, and as being incompetent.

Mr. HOGAN: We would be subject to inquiry on cross-examination.

COURT: He may answer.

Q. What would be a reasonable value of restoring that span after it fell into the river, put it in the same condition that it was before the accident? Leaving out the dolphins?

A. I gave Mr. West an estimate of cost for fixing up that bridge placing it in its present position as about \$15,000.00, but I told him I was a little off about that price.

Mr. CROSS: We object your honor to this testimony as being wholly incompetent.

COURT: Just state what the reasonable cost of constructing it was.

3. The reasonable cost of reconstructing is the bill that I presented, of \$11,000.00.

Recross-examination by Mr. Cross:

Q. There is one matter you refer to in your testimony and that is you say that this bridge was condemned by the Portland authorities because of its incapacity to accommodate the traffic?

A. Yes sir.

Q. It was a street railroad bridge there was it not?

A. Yes sir.

Q. And has been used for street railways for how many years?

135 A. Well the street railways commenced using it about 1891.

Q. You say the using of the bridge by street railways have a tendency to wreck them?

A. No it is very easy traffic over a bridge, every kind of traffic has a tendency to strain a bridge some.

Q. By putting on three cars all carrying very heavy loads over the bridge would have a tendency to weaken matters.

A. No sir, not much, if at all.

Q. Didn't they run street cars and freight cars both over the same tract over this bridge?

A. Yes sir I am running them now on the three car lines. The capacity is about seven tons.

Q. When you say you don't know of any other bridge being constructed with a protection by dolphins, what bridges do you have in mind?

A. We have four bridges in Portland, four swinging bridges in Portland.

Q. Have not their piers got dolphins on each end of them so as to protect them?

A. No sir they have a draw rest but no dolphins.

Q. Have not those piers got what you would call a cone shape protection or something, the same as the center pier?

A. No sir nothing of the kind.

Q. You think then that in this case of Mr. West, it was right and proper to build those dolphins to protect the piers against rafts of logs and so forth?

A. Yes there is a great deal of drift there and it is wise to have a protection there.

Q. What injury could it have caused to these piers, how was it possible for the drift wood to injure the piers?

136 A. It depends on the condition of the tides and the weight that it strikes the pier, or bridge.

Q. You think in your judgment then that it is possible for a large raft of logs to be driven into the pier hard enough to wreck the bridge?

A. Yes sir I do.

JACOB GOHL being sworn on behalf of plaintiffs testified as follows:

Direct examination by Mr. HOGAN:

- Q. Where do you live Mr. Gohl?
A. East Aberdeen.
Q. What was your business about the 7th of May, last?
A. Well I was doing work and caring for the bridge.
Q. Whose bridge was it?
A. Mr. West's.
Q. You were the bridge tender were you?
A. Yes sir.
Q. How long did you or have you tended to that bridge?
A. Since the first of August.
Q. Of the previous year.
A. Yes sir.
Q. As bridge tender what were your duties there Mr. Gohl?
A. Collecting the tools and swing the bridge.
Q. What power was the bridge operated by?
A. Electric power.
Q. Is there appliances for swinging it in any other way?
A. Yes hand power.
Q. Do you know the steamer Norwood?
A. I have seen her.
Q. Do you remember the incident of the Norwood going through the draw, May last?
37 A. Yes sir.
Q. What date was that?
A. On the 7th of May.
Q. Who was on the bridge in connection with you?
A. Ed. West, Oscar Gohl and myself.
Q. They were your assistants at that time?
A. Yes sir.
Q. Now at what hour that day did you go onto the bridge?
A. Well between nine and ten o'clock.
Q. Some time between nine and ten o'clock?
A. Yes sir.
Q. Who was tending the bridge when you came there?
A. A. J. West, Ed West and Oscar Gohl.
Q. What was the condition of the electric power at that time?
A. The cable was disconnected.
Q. And how were they opening the bridge when that cable was broken?
A. Hand power when I went there.
Q. State if you know whether or not order had been sent in for the connecting up of the power by the power house?
A. Well Mr. West said——
Q. You were there when the order was given?
A. No I was not.
Q. Did you hear the Norwood whistle for the bridge that day?
A. Yes sir.

Q. About what time was it?

A. About eleven o'clock I should say 11:40 about twenty minutes of twelve when she whistled.

Q. Who was on the bridge when you heard the whistle that time?

A. Ed West and Oscar Gohl.

Q. Where was A. J. West?

138 A. He went towards home.

Q. State what — if you know?

A. He went down to get his dinner. He was used to bringing up something for us, I don't know whether he was that day or not he was in the habit of doing it.

Q. Now about eleven forty the Norwood whistled for the bridge, where was the Norwood at that time?

A. I should say at Burrows' dock.

Q. What wharf did the Norwood lay at?

A. I could not say exactly this dock was laying at——

Q. Where is Burrows' dock with reference to the "G" street wharf?

A. Right above it.

Q. When you heard the signal for the bridge what time was it?

A. 11:40 I should judge.

Q. What did you do when you heard the signal?

A. I went and got the red flag and waived it.

Q. Why did you do that?

A. The boys were connecting the cable and I thought we would have to swing it by hand and that is why I waived it. To caution them.

Q. You waived the red flag you say?

A. Yes.

Q. And they were connecting up cable at that time?

A. They had it about done at that time.

Q. Then the vessel whistled the second time?

A. Yes sir.

Q. How far was it from the bridge when she whistled the first time?

A. I don't know the exact measurement.

Q. As appeared to you that day?

A. My estimate is from Burrows' dock to the bridge is about 1200 feet and I thought when she whistled the second time it was about at the Wishkah river.

139 Q. At the mouth of the Wishkah?

A. Yes sir.

Q. And what condition was the bridge in then?

A. The cable was connected when she whistled the second time.

Q. Go on and relate the occurrences from that on.

A. When she whistled the second time Ed West ran down across the bridge and he crossed by the center of the bridge he said, we have the cable connected.

Mr. CROSS: We object to the conversation said to have been had between them, as incompetent.

COURT: Just leave that out, what Mr. Ed West said, say what you did.

A. I went back to the tool house and waited for Ed West to raise the jacks and then I turned on the power and by that time Ed West was back, and I moved the bridge a little and he dropped the key in and I turned the full power on gradually. I didn't turn the full power on I have ten Seg—I turned on seven.

Q. Did the bridge open?

COURT: State all about it.

Q. When the bridge started to open I look- out of the window the boat was changing her course and then I put on more speed. I didn't require any more speed and I threw the bridge wide open.

Q. Did the bridge move right along?

A. Yes it moved right along and I stopped it, and then I stepped out on to the bridge and the Norwood had turned and I waited a few minutes and it commenced to back in and it backed into the pier and struck it.

Q. Now which opening of the draw was the Norwood headed for when she started out?

A. When she started out she was headed for the north channel, there are two channels one on each side of the draw, north
140 and south channels, she was headed for the south channel.

Q. She was headed for the north channel?

A. Yes that is what I meant if I said it or not.

Q. How far was the Norwood from the bridge when the bridge started to open?

A. Well my estimate is about 800 feet.

Q. About 800 feet?

A. Yes sir when the bridge started to open.

Q. How long did it take the bridge to open?

A. After I started it?

Q. Yes.

A. I never timed it, but it takes two minutes or a minute and a quarter to open it.

Q. To open it?

A. Yes sir, I have timed it.

Q. If the Norwood had continued its course and not changed it would the Norwood have been in time for the north passage?

A. That is why I didn't change the course of the bridge, when I saw he was changing—

Q. You say when, during all this time you were looking out the window, while the bridge was swinging?

A. Yes sir.

Q. Which way did he change his course?

A. Around to the right.

Q. Could you indicate it on the map, point it out on Exhibit "4."

A. This don't lay right to me.

Q. You are looking north?

A. After he left the Wishkah river he bowed to his right. He seemed to turn around to his right and headed towards Bryden &

Leitch's mill, and came up this way and turned around to the south. Bryden & Leitch's mill is on South Aberdeen, he turned to the south side of the river, circled around to the right and then started to back in as I said before.

Q. Started to back?

A. Yes sir.

Q. Did he strike anything?

A. He struck the pier.

Q. Which pier?

A. We term that *is* the southwest pier, that is on the north end, north, it is not exactly north, that is what we term it on the bridge, it doesn't lie exactly that way.

Q. You say when the bridge started to open it was how far away?

A. I should judge 800 feet.

Q. And how far did he continue on that course to the north opening until he changed his course?

A. Not very far.

Q. How far about in your judgment?

A. A few hundred feet away I should estimate it.

Q. How far was the bridge open when he changed to the south?

A. When he changed his course he changed to his right we had just naturally cleared the span. When I noticed him change his course we had just cleared the span.

Q. So what you called the north span of the bridge, moved right along?

A. Yes sir it moved right along.

Q. How long a time elapsed in your judgment from the giving of the first whistle and the second whistle? For the bridge?

A. Not over a minute I could not — that, I have not given that any particular thought.

Q. And about the time of the second whistle the bridge
142 started to move?

Mr. Cross: We object.

Court: Objection is sustained.

Q. What speed was the vessel running?

A. That I can't say what speed but she was not going very fast I could not say that is a question I can't answer, just what speed she was running.

Q. Is the flag here in court that you were using on that day?

A. I suppose Ed West brought it here.

Q. This was the flag you used is it Mr. Gohl?

A. Yes sir that is the flag.

Q. You took it and what did you do with it?

A. It was standing up, I had a hole bored in the end rail of the bridge and ran to it and took it out and swung it like that (indicating by waving it violently), several times back and forth and I put it back again where I took it from.

Q. How near was that rail where the flag was standing to the house where you were operating the power?

A. I think that is in the 5th panel and the panels are about

eight feet long the hole is either on the 4th or 5th panel, from post to post I think they are about eight feet apart.

(Indicated on map.)

Q. Where was it, where would it be, that is the center span, where would it be, Mr. Gohl?

A. It was about there, it was about there I should judge.

Q. You had a hole in the rail and set it up there after you got through waiving it?

Mr. Cross: Let the witness make some indication there.

Q. How far from the house is it?

143 A. Let me see my estimation is about 35 or 40 feet I don't know exactly the distance of these panels.

Q. About 40 feet from the house toward the south?

A. Yes sir.

Q. Had the flag been in that rest when the Norwood first blew her whistle?

A. It was there when I went on the bridge.

Q. What did you do when you heard the whistle, with reference to the flag?

A. I took it out and waived it as I have done here.

Q. Which way did the bridge open that day?

A. At that time?

Q. Yes sir.

A. The north end, as we term it, swung east, swung up stream.

Q. Up stream?

A. Yes sir.

Q. Do you remember what the stage of the tide was?

A. Yes sir I have slight recollection.

Q. How full or what?

A. The tide was full at that day I think about one o'clock I meant to bring my time book.

Q. When the boat struck the pier what direction was the boat headed?

A. She was pointed a little towards the Bryden & Leitch wharf or mill.

Q. Were they up stream or down?

A. Down stream.

Q. What part of the vessel struck the pier?

A. The side of it, I should say the forward or the center of the boat the left side of the boat struck the pier, forward of the center.

Q. Did the boat work its way through the passage?

144 A. Yes sir.

Q. Did you notice anything wrong with the pier after the boat went through?

A. I would not notice anything wrong until I swung around, I swung around and I saw that it was sprung and the swinging span would not go in it touched the corner, the swinging span would not go in.

Q. The swinging span would not go in?

A. No.

Q. What became of that south span of the bridge?

A. It fell during the afternoon or evening. I went away within an hour of that time, I left the bridge and some time in the afternoon I went up there and it was still standing. I saw it the next morning and it was down. I didn't see it when it fell.

Q. You didn't see it when it fell?

A. No. The span of it when it was falling, I heard it fall, I was told, I didn't see it fall?

Q. You was told that it fell?

A. Yes sir.

Cross-examination by Mr. Cross:

Q. I didn't get your first name?

A. Jacob B. Gohl (Jacob B. Gould.)

Q. Any relation to our man J. Gould?

A. No sir.

Q. Had you been sick prior to the 7th of May?

A. I had a boil on my neck the back of my neck a carbuncle here.

Q. Had you been in the hospital?

A. No sir I was not in the hospital.

Q. How long before this day had you been, had it been since you worked any?

A. I had not worked any for about three weeks, only occasionally going up on the bridge.

145 Q. Is the work of opening that bridge hard work? I mean by hand?

A. Yes unless you have plenty of good men, three men can open it.

Q. Four men can do better?

A. The more men you put on, the less labor for one to pull.

Q. Can two men open it?

A. If it is still and is not windy, not if there is a very strong wind. Yes two men have opened it Oscar and I have opened it but it is — very slow process.

Q. How many times have you and Oscar tried to open it by hand?

A. I could not say as to that, perhaps we have opened it probably a dozen times alone.

Q. How old is your son?

A. Twenty one years next February.

Q. He is older than he looks?

A. Well yes.

Q. On this particular morning you say when you came on the bridge Mr. West himself was there?

A. Yes Mr. West was there, when I went onto the bridge.

Q. Was this carbuncle on the back of your neck then?

A. Yes sir it was getting better, I was getting pretty well along then.

Q. You were what we would call a sick man out of bed? Were you not?

A. No sir I was not sick.

Q. Didn't that carbuncle bother you?

- A. No sir at that time it didn't it was nearly well.
- Q. You say when you went onto the bridge the power was out of order?
- A. Yes sir.
- Q. Did you know that the bridge got out of commission?
- A. It had been off about——
- Q. I didn't ask you how long it had been off, I just simply asked you if you knew that the bridge was out of commission?
- 146 Did you see anything unusual about the bridge when you went there?
- A. Nothing no more than there was no electric power.
- Q. Do you know whether or not the bridge had been opened and closed that morning?
- A. No I don't know that it had, but undoubtedly it had.
- Q. Do you know how they had been opening it, by hand or electricity?
- A. It must have been opened by hand power if the electricity was off.
- Q. What time of the day was it when you went on the bridge?
- A. Between 9 and 10 o'clock.
- Q. The electricity is one of the modes of operating the bridge isn't it?
- A. Yes sir.
- Q. And by use of this electricity you could open it in about a minute and a half?
- A. Yes very easily.
- Q. I- can be opened in a minute can it not?
- A. Yes I have opened it in three quarters of a minute.
- Q. How long would it take by hand?
- A. Three minutes or probably four.
- Q. I will ask you how long it would take two men to open it?
- A. It depends upon the wind in a still calm day it will it is a whole lot easier to open that if the wind was blowing.
- Q. And it makes a difference about your opening the way the wind was blowing and the tide was strong?
- A. Not very strong at that hour of the day.
- Q. Did you try to open that bridge by hand?
- A. Ed West and Oscar Gould had been opening it about three times that day.
- Q. You had opened it up by hand before?
- 147 A. Yes sir.
- Q. You three had it opened by hand before?
- Q. Yes sir.
- Q. Who went through do you know?
- A. Yes sir.
- Q. Who?
- A. The Fleetwood, I am not positive as to the other, but I think it was the Thistle.
- Q. So that within an hour or such a matter you had opened that bridge about three times?
- A. A little over an hour.

Q. What other time do you think you opened it?

A. I remember of opening that morning three times.

Q. Have you any way of fixing the time that you went onto the bridge?

A. I told you I remember of having been at Mr. West's house at nine o'clock, just before I started for the bridge.

Q. You say Mr. West went to dinner or lunch?

A. Later on not at that hour.

Q. Was he there when you opened the bridge any one of these times?

A. Yes sir.

Q. How many times did you open it while he was there?

A. I think once that was for the Fleetwood.

Q. What time did you think Mr. West went home?

A. I didn't look at my watch.

Q. And then you and the boys opened it again for some other vessel?

A. Yes sir.

Q. Did you have any trouble in opening it at these times?

A. No trouble, only we put it pretty hard on it, three men can push the bridge around, but it is work.

148 Q. Now you say you were trying to get the current connected in some way between these times of swinging?

A. They were working on it.

Q. Who?

A. Ed West and Oscar Gould.

Q. Did you know what was the matter with the current?

A. I didn't pay much attention, I knew that they were, I didn't think anything about them connecting it, about the time I saw the electricians there but whether they had a hand in connecting that cable I don't know.

Q. Did you know when you went there that the electricians had been sent for?

A. I told you before I didn't know only what they told me.

Q. How long before you saw the men, that the electricity was off?

A. When I first went there two hours before the Norwood had come along.

Q. Had the electricians been sent for?

A. Yes, sir.

Q. Now this information that you got was from Mr. West, Mr.

A. J. West?

A. He telephoned, they said that they were coming right over.

Q. It was something like an hour and a half that you knew the electricity was off?

A. Before the electrician put in an appearance, I was expecting him any time, for Mr. West told me he notified them.

Q. Were you not expecting him by the time that you operated the bridge? Did you expect him to come?

A. Yes of course we did, he was notified and *and* they were in the habit of coming, they didn't come direct.

Q. When the Norwood whistled then the bridge was closed?

A. Yes the bridge was closed, the set screws were set.

149 Q. They had it connected about the time that the vessel whistled.

Q. You think they had connected it about that time?

A. Yes sir.

Q. What was the trouble with the cable any way?

A. The cable got out of order some way and was misconnected, it had fallen into the water, I never asked them what the trouble was.

Q. When the Norwood whistled the first time where were you?

A. In the toll house.

Q. That is where you operate the machinery?

A. Yes sir in there.

Q. Was the electricity in working order then when she whistled the first time?

A. That is what I was telling you, when she whistled Ed West came running down and said he had the cable connected and went to raise the jacks.

Q. The first time?

A. Yes sir.

Q. Now then he came down to the end of the bridge to where you were in the toll house?

A. He went past it.

Q. And you were then ready to open the bridge were you?

A. I was ready as soon as he went to the other end and raised the jacks and I waived the flag and he was going down to raise the jacks.

Q. Now you went out of the house in the same direction that he went?

A. Yes sir.

Q. And had this flag and waived it?

A. Yes sir and waived it.

Q. And this vessel at that time was at the "G" street wharf?

Q. That is where she whistled.

150 Q. That is something like two thousand feet away?

A. Seventeen or eighteen hundred or two thousand feet.

Q. What color is the wood work of that bridge? It is a princess metallic, isn't it?

A. No it is not, it is dark brown.

Q. If you know what princess metallic is that is just what it is. This hole that you speak of you say was in the rail in the end rail is that where the flag was?

A. Yes sir.

Q. And when the flag was sticking in the rail, the wind was blowing in what direction that day?

A. I am inclined to think that we had a southwest wind that day.

Q. Coming from the direction of the boat?

A. Coming from down the bay, it was a southwest wind it comes nearly straight across the stream.

Q. When it was sticking in the rail it was sticking right straight up, I am asking you as to the facts.

A. Yes sir right straight up, that rail this superstructure here.

Q. Now these railings or this railing is upright along these upright beams isn't it?

A. Of the upright beams no.

Q. Against them?

A. The superstructure of the beams are large timbers.

Q. Iron timbers? The braces?

A. There are not wooden -races, there are wooden beams standing up and down this way, these are of iron, and these are iron, but this rail in here is wood, there is several wood railings along there. This top one is 2x6 and those right under these 2x6 are 2x4 and these are 6 inch strips.

Q. How far is it from the floor up to the top of the rail the top rail?

151 A. About something like three feet.

Q. Over three feet?

A. Perhaps a little.

Q. Three and a half feet?

A. Yes sir.

Q. So that when this staff was in the rail this flag was up right at the top of the rail?

A. Where?

Q. Right up here (indicated).

A. Which side of the bridge is that on?

Q. On the west side.

A. It was on the west side standing on the west side about 40 feet from the house, I would not say the exact distance.

Q. And when it was standing here the wind drove this part of it over the bridge?

A. No.

Q. Where?

A. Sideways like.

Q. That would depend upon how the wind was blowing would it not?

A. Yes sir, it would be that way then.

Q. You say you waived it?

A. I did.

Q. Was that while he was raising the jacks?

A. Yes sir, I want you to understand this thing right, don't try to misunderstand it. As Ed West came to the toll house and told me he had the power on, as I told you before and I went right back to the toll house and looked back at him and waited for him to go and raise the jacks and when he came back, I went out and waived the flag and then I started the bridge, slipping the key in and lever on and let her go.

152 Q. And that was when she had whistled loose from the "G" street dock?

A. That was after she had whistled.

Q. How long afterwards was it after she left the "G" street dock?

Q. How long?

Q. Yes sir.

A. It was right away after he whistled the second time I went right and got the flag, I got it immediately after the whistle.

Q. After the second whistle?

A. The second whistle don't amount to anything we take the first signal, that is the one that we use.

Q. You went right to work when you heard her whistle the first time?

A. Yes sir.

Q. And she had come up to about how many feet towards the bridge when she whistled the second time?

A. When she whistled the second time?

Q. Did she whistle twice or once?

A. Twice, two times.

Q. Where was she when she whistled the second time?

A. About the mouth of the Wishkah river.

Q. That is the time you waived the flag?

A. I waived it——

Q. Did you waive it after or before she whistled the second time?

A. About the same time.

Q. And then you waived and stuck it back in the hole, how long or how many times did you waive it?

A. I don't know.

Q. A half a minute?

A. No not quite so long, several times back and forth I know.

153 Q. Then you stuck it in the hole and went back to your work?

A. Yes sir.

Q. The bridge had not started to open when you waived the flag?

A. No. Ed had gone down to raise the jacks, if you understand, at that time. He raised the jacks and said let her go.

Q. It didn't start until Ed came back from the south end and told you to let it go? Stuck the pin in?

A. Yes sir.

Q. The boat?

A. No the bridge.

Q. The bridge?

A. Yes, I started as soon as I got the signal from him.

Q. When did you get the signal from him to let her go?

A. It didn't take a minute to run down there and turn the jacks.

Q. Did you start the bridge then when Ed came back to the Nickel house?

A. Yes sir, he had to give me a chance to put the key in.

Q. Where is this key, where is this piece of machinery that you put this key in?

A. Right at the toll house.

Q. So that when Ed had got back to the toll house he told you to let her go and then you opened her in about a minute?

A. Yes or a little longer.

Q. How long was it from the time you started the bridge until you got her going how far had the vessel got up?

A. Between the bridge and Bryden & Leitch's mill, and the bridge, about the mouth of the Wishkah.

Q. So that between the time and time that he got back and told you to let her go, the vessel had come to the mouth of the Wishkah and had turned around in a circle and was going in the direction of Bryden & Leitch?

154 A. Yes she was turning that way yes.

Q. Had her bow turned you say entirely?

A. No she was swinging around like this (indicating).

Q. What time was this?

A. I could not say the exact time, a person couldn't tell unless he was taking out his watch, you can't get it.

Q. Did you see Mr. Graham there that morning?

A. Yes sir.

Q. Didn't he help you to open the bridge?

A. No.

Q. Didn't help you any?

A. He didn't have anything to — with it.

Q. Did he help you at all that morning?

A. No.

Q. You didn't try to open the bridge that morning, for the Norwood with the lever?

A. I didn't.

Q. And the bridge had been in the condition; she could have been opened by hand all that time could she?

A. It can be opened by hand at any time if the power is attached or not, we don't have to connect the electricity to open it by hand.

Q. How long was it from the time she whistled to open the bridge at the "G" street wharf before you say her head — towards Bryden & Leitch's mill?

A. Perhaps two or three minutes.

Q. Did you think it was any longer than that?

A. It might have been I could not say the exact time.

Q. Was not 15 or 16 minutes?

A. No not as long as that.

Q. Was the vessel standing still when she struck?

A. No sir.

155 Q. Were you excited about that time?

A. Not in the least. I don't get excited I keep my head.

Q. Didn't you think there was any danger?

A. At first no I didn't.

Q. You say he had turned his course and going towards Bryden & Leitch's mill, and you say if he had kept on his course he could have gone through the north opening?

A. Yes sir if he had kept the north channel I have not the least doubt but what he would.

Q. When he turned to go over to Bryden & Leitch's mill he just missed this south resting pier of the span?

A. No he was farther away from that span, he could not strike it.

Q. How far away?

A. Four hundred feet at least. I think he was four hundred feet when he past the center pier.

Q. Four hundred feet?

A. Yes sir.

Q. How far is the center pier from the bridge?

A. About 150 feet.

Q. That would make it about 550 feet from the bridge where he struck the pier.

A. No about 450 feet.

Q. Now his vessel when he swung in to the opening he swung in so that the vessel was, with the stern of it was not to the opening of the bridge on the south side?

A. When the vessel backed into the bridge the stern of it was pointed up stream.

Q. It had passed the pier it had passed the corner of the span as we call it, about one half of the vessel was lying below the span.

A. Fully a half of it yes and a little more.

Q. It was in that position all the time that he had made this circle course across the river. Do you think that he got there
156 by the time that the bridge was opened, are you able to say?

A. No, I am not trying to say that. I say at the time we just completed the circle by the time he did.

Q. That is the vessel had the stern of it out past, into the opening of the bridge?

A. Not until after it commenced to go backwards.

Q. Do you think he was backing lengthwise before he struck the bridge?

A. Yes he backed quite a good many feet. You can see yourself how many feet it would be.

Q. Where were you when the vessel went into the bridge?

A. I was standing out on the approach outside.

Q. Who was running the machinery.

A. The machinery was stopped and the boat struck the bridge.
Long before he got there the bridge was open.

Q. You mean it was turned before he got there?

A. Yes sir.

Q. It was not open or started to open?

A. Yes it was. When I started the bridge and set it to going I looked out of the window and saw him changing his course.

Q. You were looking out of the window in the toll house?

A. Yes sir I stepped back and looked out of the window, the boat was coming and I thought he was going to change to the other channel I looked on to see and I had it opened before he got near it, I saw there was time and opened it before he got near it.

Q. I will ask you if it is not a fact that Mr. Graham came on to the bridge and called your attention to the Norwood coming?

A. No he didn't.

Q. Did you see him there at all?

A. Yes sir.

157 Q. What was he doing.

A. He came on to the bridge just past the toll house and after he got past the toll house he said he was going to speak to the captain, that was the only conversation. I let him stand there.

Q. That would be on the south end of the bridge?

A. Yes sir.

Q. The vessel had not changed its course then.

A. Yes sir.

Q. I will ask you now if it is not a fact that Graham came onto the bridge and called your attention to the Norwood? And suggested to you that you open the bridge by hand?

A. He didn't do anything of the kind.

Q. You say you didn't put the lever on?

A. I didn't put the lever on for the lever was on.

Q. And at that time you and Mr. Graham didn't start the bridge to open?

A. Mr. Graham had nothing at all to do with the bridge whatsoever.

Q. In trying to open the bridge by hand you didn't start it with the north end up stream at all, or open it about 10, 15 or 20 feet. And then were requested by your son or young West to let her go that they would swing it by electricity? And if you didn't then let go of the lever and let her go back and then open it by electricity?

A. No sir I didn't.

Q. Isn't it a fact that after you tried to open it with a lever you then applied the electricity and opened it in the opposite direction with the north end down stream and the south end up stream, isn't that the way it was finally opened?

A. No sir I did not and Mr. Graham had nothing at all to do with it whatsoever, he told me that he wanted to speak to the captain and he went so it opened with the north end up stream.

Q. Were there any electricians that put in an appearance?

158 A. I saw Ed Houser.

Q. Were there any passengers crossing the bridge at that time?

A. I didn't see anybody.

Q. Do you remember seeing a street car around there anywhere?

A. Yes sir.

Q. Where was it?

A. It was standing on the north span.

A. *It was standing on the north span.*

Q. Isn't it a fact that this car came up on the bridge?

A. No sir.

Q. So if there were any passengers crossing that bridge at that time you don't know it?

A. No sir. I noticed Graham come onto the bridge after the vessel whistled but as to his calling my attention to the Norwood coming, he didn't do anything of the kind.

Q. That was about the time that the vessel changed her course, isn't it?

A. Yes sir.

Q. That bridge as a matter of fact will open clear around if you want to open it or close it that way wont it?

A. You know just as much about it as I do, I never heard of it, I never opened it that way.

EDWARD WEST after being duly sworn, testified on behalf of plaintiff as follows:

Direct examination by Mr. HOGAN:

Q. You live at Aberdeen, Ed?

A. Yes sir.

Q. You are the son of A. J. West?

A. Yes sir.

Q. Where were you on the 7th of May last?

A. At the Chehalis river bridge.

159 Q. What were you doing there?

A. I had been running the bridge, until Mr. Gould came up.

Q. Who was with you?

A. When?

Q. At the time of the accident?

A. On the bridge altogether was Mr. Gould, and his son and I, were turning the bridge, or tending it.

Q. Did you hear the Norwood whistle that day?

A. Yes sir.

Q. Signal for the bridge?

A. Yes sir.

Q. About what time of day was that?

A. About twenty minutes of twelve I think.

Q. What were you doing at that particular time?

A. I was lifting the cable. It had fallen into the river.

Q. Was the electricity or electric power working?

A. Not at that time no sir.

Q. What are the modes of swinging the bridge, what powers?

A. You can swing it by electricity or hand power.

Q. In lifting the cable up what were you trying to do?

A. I was trying to get the electric power in working order.

Q. Did you have the electricity connected yet?

A. They had not at that time no sir.

Q. Did you get it connected?

A. I did after the first whistle.

Q. You got it connected up?

A. Yes sir.

Q. What did you do then?

A. I ran down to the other end, I think Mr. Gould was in the house. I went down and told him that we had the power on
160 and I lifted the jacks.

Q. How long a time does that take?

A. Not more than a minute.

Q. Was the bridge already to be opened by the electric power?

A. Yes sir.

Q. What are the jacks and what are the purposes that they are used for?

A. There are two jacks, that rest the span up to, and take it off of the center pier.

Q. How do you raise the jacks?

A. Turn the wheel.

Q. How many are there on the bridge?

A. Two on each end or corner.

Q. The purpose is to raise it and let it slide through?

A. Yes sir.

Q. And every time the bridge is opened does that have to be done?

A. Yes sir.

Q. And when the bridge is closed what is to be done?

A. Raise the jacks.

Q. At the time you got back there and put the jacks in shape the bridge was ready to open?

A. Yes sir.

Q. What if anything was done towards opening the bridge?

A. Commenced opening right away or right off.

Q. Where was the Norwood then?

A. Opposite the Wishkah river.

Q. About how far from the bridge?

A. I should judge about 1000 feet.

Q. Was the bridge swinging or moving without delay or pause?

A. Yes sir.

Q. Where, or when the bridge started to open at what time, at the whistle of the steamer?

A. About the second whistle.

161 Q. What direction was the vessel going?

A. Towards the west.

Q. What direction?

A. The north side of the swing.

Q. Did she continue that way, for how long?

A. It continued I should say about 500 feet it took a sharp turn to the south.

Q. How far was the bridge when it had turned to the south?

A. About half open.

Q. State whether or not if she continued her course—did she continue as if to pass through?

Mr. CROSS: We object.

Court: Objection is sustained.

Q. How long did it take to open the span?

A. I think about a minute.

Q. Isn't there different speed of power that can be used or applied?

A. Yes sir.

Q. Do you know anything about the segments?

A. No sir I do not.

Q. You think on this occasion it opened in what length of time?

A. In about a minute.

Q. And about 500 feet from the bridge the boat turned to the south in a sharp turn?

A. Yes sir.

Q. Describe the acts of the boat and bridge at that time?

A. As I said before the bridge was about half open and the boat took a sharp turn to the south and started to back through and was about 20 feet of the bridge then, so I jumped on my wheel and went and told my father, my wheel was there on the span.

Q. Did you see it hit?

162 A. No sir.

Q. Which way was it swinging?

A. Up stream to the east.

Q. Which way was she opened?

A. Her stern was about northeast or north I think.

Q. With reference to the bridge what would be her position?

A. The bridge was opened.

Q. No I mean what would be the direction of the boat with reference to the bridge?

A. The bridge I think would be pointed straight north.

Q. How was the boat with reference to Bryden & Leitch's mill?

A. She was pointed about direct with Bryden & Leitch's mill.

Q. Did she back or drift any?

A. She drifted sideways.

Q. Did you see the anchor put out?

A. No sir I didn't.

Q. When the bridge started to move where were you?

A. I was on the north span. The small span on the north side of the swing.

Q. You got off of the center of the span about the time that the bridge started to move?

A. Yes sir.

Q. In which direction did the bridge start to open?

A. The north end went east.

Q. You left when it was about 20 feet from the pier?

A. Yes sir.

Q. And when you got back what did you see?

A. The boat had backed through I think.

Q. In what condition was the bridge?

A. The bridge was knocked out of line I think about three feet.

Q. Which part of it?

163 A. The north end of the south span.

Q. Was the draw closed then, did you close the draw or try to close it?

A. We tried to close it but it would not close, the corners of the bridge touched.

Q. Did it hit the pier?

A. Yes sir.

Q. Described that?

A. (Makes a drawing.) This is the corner it hit right there.

Q. Where is the pier that was damaged?

A. Right here (indicated).

Q. Which way is down stream?

A. This way (indicated).

Q. When you tried to close that, that was the position it was in?

A. This corner hit this south span.

Q. Have you anything to call your attention to that?

A. Yes Mrs. White was there——

Q. On this span?

A. Yes sir she came from South Aberdeen.

Q. What did you do?

A. I climbed over from the swing on the south span and took her dinner basket and I took it across over and she came around from the south side, came over here to the south span.

Cross-examination by Mr. Cross:

Q. You had been at the bridge all morning had you Mr. West?

A. Yes sir.

Q. About what time did you go?

A. About 7 o'clock.

Q. How had you been operating the bridge that morning?

A. By hand power.

Q. Do you know about when it was that the electricity was cut off?
or power broken off, or informed that it was?

164 A. About, somewhere about 8 o'clock, I think.

Q. In operating it by hand power who had been at the
lever?

A. Why there was my father and myself, and Jacob Gohl, and his son; Jacob Gould took it the latter part of the afternoon.

Q. Do you remember about how many times you had it opened
and closed that morning?

A. I think about three times.

Q. How long before the Norwood whistled had it opened before?

A. We had it opened for a boat awhile before that?

Q. How long?

A. I could not say.

Q. Do you know the last boat that went through?

A. No sir I don't.

Q. Had you been at work on this electric power most all the morn-
ing?

A. Yes sir just about all morning.

Q. Who was helping you if any one?

A. Jacob Gould's son.

Q. Relative to the ticket house where was this cable?

A. It was right under the ticket house, of the north span.

Q. Close to the ticket house?

A. Yes sir.

Q. Do you know how the cable happened to be broken?

A. No sir I don't.

Q. Was there any one there when it was broken, on the bridge?

A. Jacob Gould's son and myself were there when it became
broken. That is when we found the power was off.

Q. Was the power off when you went there that morning?

A. No sir it didn't go off until 8 o'clock that is when we found
it off.

165 Q. Did you operate it by electricity that morning?

A. No sir.

Q. So that you didn't know just when it had become broken?

A. No sir.

Q. Who was operator, who applied the power, whose business was it to apply the power?

A. It had been mine before that.

Q. The boats that had passed that morning were they from down stream going up?

A. I could not say.

Q. You say the bridge will swing either way?

A. Yes sir.

Q. And as to whether you opened it with the north end up stream or down stream depends on the course the vessel is taking is that right?

A. Yes sir.

Q. If a vessel is coming from down stream which way do you open?

A. It depends upon which channel he takes.

Q. So that the direction or which opening the vessel appears to be taking or making for, that is the side you swing?

A. Yes sir.

Q. In this instance which channel or opening did the Norwood seem to be making for?

A. The north channel.

Q. Now when you speak of channel you don't mean to say that there are two separate channels there.

A. No I mean there are two openings one on each side of the stationary span.

Q. When you say channel you mean opening of the bridge?

A. Yes sir.

Q. In the river proper there is no such thing as separate
166 channels it is all north channel there isn't it?

A. Yes sir.

Q. You say that you had got the cable connected about the time that the Norwood whistled first?

A. Yes sir.

Q. How did you get hold of it?

A. We had a stick and a rope, we had the stick bent and *tide* to the end of the rope and we got it out that way.

Q. What did you have to do to connect it?

A. We would put it into the fuse box.

Q. All you would have to do would be to put it into the fuse box?

A. Yes sir.

Q. Was the cable broken or slipped out?

A. Slipped out.

Q. How long before this had you sent for the electricians?

A. Just as soon as we found the power off we sent for my father and he telephoned to the electricians.

Q. About what time?

A. About eight o'clock.

Q. 8 o'clock?

A. Yes sir.

Q. And you say the Norwood whistled about what time?

A. About 15 or 20 minutes of twelve.

Q. What were you doing when the Norwood whistled first?

A. I was working at the cable.

Q. What were the other people on the bridge doing?

A. I don't know the boy was helping but I think he left.

Q. What help would you get?

A. I would have to have some one.

Q. You went and connected it with the fuse?

A. Yes sir.

Q. The bridge is up above the bridge approach is it?

167 A. Yes sir.

Q. It is up above the bridge floor too isn't it?

A. Yes sir.

Q. In the fuse box?

A. Yes sir.

Q. You simply insert the end of that cable into the fuse?

A. Yes sir.

Q. When did these electricians get there?

A. After the Norwood whistled the second time I think.

Q. Did you continue to work at the electricity power or current from the time she whistled the first time until she whistled the second time?

A. I could not say. She whistled the first time as I was ready to put the cable in to the fuse box, then I went down and raised the other jacks on the south end, that is when she whistled, between the first and second time.

Q. Between the first and second time after she had whistled the first time and before she had whistled the second time you think you had connected the cable, and had some one hold it?

A. No sir. I went down to raise the jacks on the south side, and had not coupled or connected it up yet.

Q. About where were you when she whistled the second time?

A. I could not say.

Q. You don't remember that?

A. No sir.

Q. You remember the whistle or the hearing of the whistle?

A. Yes sir.

Q. You would have to go about how many feet?

A. To what?

Q. To raise the jacks.

A. It was about 315 feet.

168 Q. About 315 feet you had to walk?

A. Yes sir.

Q. And then you raised the jacks?

A. Yes sir.

Q. And then came back?

A. Yes sir.

Q. That is when you came back, or when you came back had this person still holding the end of the cable?

A. I don't remember whether it was him or not.

Q. Somebody was holding it, whoever it might be?

A. Yes sir.

Q. Did you then tighten it up?

A. No sir I didn't.

Q. As to whether it was this same person holding the cable or not you don't know?

A. I don't know there was quite a crowd around there.

Q. The electricians had gotten there at that time had they?

A. Yes sir.

Q. As to whether they had connection or not you don't know of course?

A. They had connection.

Q. When did you first learn that they had connected?

A. They said they had it tightened. I had it connected before I left.

Q. You had it connected before you left?

A. Yes sir.

Q. Who gave the orders to open the bridge?

A. Jacob Gould.

Q. That is the old gentleman?

A. Yes sir.

Q. Do you remember where he was when he gave this order?

169 A. Opposite the toll house, the lever is in the toll house.

Q. The lever is in the toll house?

A. Yes sir.

Q. That was after you had gone back and raised the jacks and clear back to the toll house?

A. No sir before that, as I was going down.

Q. You could not swing the bridge before you raised the jacks?

A. As soon as I had the jacks raised he was ready to open the bridge and I said wait a minute until I get the pin in and so I put the pin in and the bridge started to move.

Q. When did you take that pin out?

A. In the morning.

Q. When that pin is out you don't have to move the electric machinery?

A. Yes sir. Unless that pin is put in the electric machine will not open the bridge.

Q. It won't open the bridge unless that pin is in, that is with the electricity?

A. No.

Q. Then the bridge could not swing at all until you got back?

A. No sir.

Q. And that key is located how far from the toll house?

A. It is right in front of the toll house.

Q. Then you say the Norwood was where, or do you remember about where she was then?

A. I think she was just about, I think about the mouth of the Wishkah river.

Q. Had she whistled the second time then?

A. I don't remember.

Q. Now all of these things happened in a very short time didn't it Mr. West?

170 A. Yes sir.

Q. So that in this matter of time and distance, have you any distinct recollection?

A. No sir I have not.

Q. You were interested in the bridge?

A. Yes sir.

Q. Did you see the Norwood when she changed her course?

A. Yes sir.

Q. About how far was she then?

A. About 500 feet.

Q. That would be something like one-half way from the mouth of the Wishkah and your bridge?

A. Yes sir.

Q. And the resting pier of your bridge including the dolphin at the end is about how far from the bridge?

A. About 160 feet.

Q. What were you doing when you observed that she changed her course?

A. I don't remember.

Q. Did you watch her as she went across the river?

A. Yes sir.

Q. What was the bridge doing while she went across the river?

A. The bridge was opening or part open.

Q. At the time she started to cross the river the bridge was just ready to open?

A. The bridge was open I think, nearly so.

Q. Are you certain of that?

A. It was over half way open when she was changing her course.

Q. When she was changing her course how far across the channel had she gone?

A. I didn't understand that question.

171 Q. What position was she in when you observed the changing of her course?

A. She was turning side wise and drifting sideways when I noticed her.

Q. So that the vessel had changed her course and was drifting up the river with the tide?

A. Yes sir.

— Broadside toward the bridge?

A. Yes sir.

Q. And you think that the bridge had started to open, that it was open when she drifted sidewise, the bridge was open, when you say she was open you mean she started to open?

A. I think it was clear open.

Q. I believe you stated a moment ago that she was half open? When the boat changed its course?

A. I said when the boat started to turn, it was half open.

Q. After she had changed her course she was drifting broadside towards the bridge?

A. Yes sir.

Q. And when you first saw her the bridge was about half way open as you remember it?

A. I could not say exactly.

Q. Now how long would it take to open — bridge after you got it started?

A. From three quarters of a minute to a minute and a half.

Q. That is with the wind?

A. Yes sir.

Q. And by hand how long?

A. I could not say.

Q. You have operated this by hand many times have you not?

A. Yes sir.

172 Q. You know you have an idea how much longer it takes by hand than by the motor power don't you?

A. I could not say exactly.

Q. As long again?

A. Longer than that.

Q. Did you try to open this bridge by hand for the Norwood?

A. No sir.

Q. Do you know where she was when he whistled first?

A. She was at the dock I think, the "G" street dock.

Q. The "G" street dock?

A. Yes sir.

Q. And how far is that from the bridge?

A. It is all the way from 1500 to 2000 feet.

Q. Under ordinary conditions how long would it take for the vessel to drift from the "G" street dock to your bridge?

A. I could not say exactly I should think it would take more than five minutes.

Q. That would be from the dock to the bridge?

A. Yes sir.

Q. You could not open the bridge in five minutes by hand, could you?

A. I don't think so.

Q. Is that your experience, if they whistle that far down the stream that you can't get it open?

A. I don't know exactly I am just saying as I think.

Q. From your experience there can you call to mind in your own experience of vessels whistling from that distance and getting it open in time by hand?

A. I have started to open it by hand and they get through all right.

Q. Do you know where these vessels were that went through that morning, have you any of them in your mind?

A. No sir I can't say, I can't recall them.

173 Q. Now do you think that if the Norwood had continued on her course that you would have gotten the bridge open in time?

A. Yes sir.

Q. Was there a flag out?

A. Yes sir.

Q. And what was the purpose of that flag?

A. The captain of the Daring, he said for us to put out a red flag so that if we would have to swing it by hand they would wait for us, and they have waited for us to swing the bridge.

Q. It is danger, in any case, is that what you intended it for?

A. Yes sir intended it for a danger signal.

Q. Intended it for a danger signal did you?

A. Yes sir.

Q. And what was the danger if you would open it by electricity?

A. If the boat came up there and the tide running in or out which way it was running, it would drift into the bridge.

Q. You say if it had come on there would have been an accident?

A. Yes sir.

Q. Why did you signal for the boat?

A. We didn't know whether the power was going to operate or not.

Q. So you didn't know whether the bridge was going to open or not?

A. No sir.

Q. As you know it now, you believe that you did get it open in time for her to have gone through?

A. Yes sir I think she could have gone through.

Q. Now when the Norwood, or up to the time that the Norwood whistled the second time you didn't know then that you were going to get it open or not?

Q. We started to open it.

Q. That is as early as you had any idea that you would get it open?

A. Yes sir.

174 Q. Now if you had not been able to make that connection at that time then you could not open the bridge for him?

A. We could if we had used the hand power.

Q. You could?

A. Yes sir. We could not have done it at that time but he could *had* held his boat there.

Q. Do you think that you could have opened it by hand if the electricity had not worked?

A. Yes if he had waited or held his boat.

Q. You could not open it in time for the vessel in the ordinary course of business?

A. No sir.

Q. If as a matter of fact he could not have held his vessel and your electricity had not have worked then it would have been a collision with the bridge?

A. If he had got through the north side of the bridge and had kept his boat straight it would have pushed the bridge open.

Q. Do you think that is the reason why he could have gone straight ahead instead of going across the stream?

A. I don't see any reason why he should cross the stream.

A. In your judgment as you view the situation there, in the first place the bridge was not in the condition to open when she whistled the first time?

A. No sir.

Q. But it was always in a condition to be used by hand?

A. Yes sir.

Q. And you didn't try to open it by hand for the Norwood?

A. No sir I didn't.

Q. Between the time that she left the "G" street wharf and until she got up to the mouth of the Wishkah river you were employing your time trying to connect your electric current?

175 A. Yes sir.

Q. If you had continued to open it by hand after she blew the second time you could not have opened it in time for the vessel?

A. No sir.

Q. And at the time she whistled the second time the bridge was closed?

A. I think we just started to open the bridge as she whistled the second time.

Q. To the appearance on the outside she was standing in a closed condition?

A. Yes sir.

Q. And after she whistled the second time you then got the electric current connected?

A. Yes before she whistled the second time just about the time she whistled the second time.

Q. You could not say positively?

A. No sir.

Q. We will say then about the time?

A. Yes sir.

Q. You got the current connected and after you got it connected you then you yourself relieved the bridge of its fastenings, and up to that time the bridge was fast upon its bearings was it not?

A. Yes sir.

Q. And you were depending upon the electricity to open it?

A. Yes sir.

Q. And if you had not connected the electricity you would have still let the bridge rest on its bearings?

A. No sir we would not.

Q. Were you expecting the Norwood to keep on and push the bridge open if she came through?

A. No sir.

Q. What would you have done? If the current didn't
76 connect what would you have done?

A. We would have opened it by hand.

Q. But up to that time you had not undertaken to open it by hand?

A. No sir not for the Norwood.

Q. Did you have the levers on?

A. We had it so that we could put it into the place it was lying there.

Q. Did you have it in mind to open it by hand if you could not connect it by electricity?

A. Yes sir.

Q. That red flag had been out there the whole morning had it?

A. Yes sir.

Q. Now you say that the red flag was put there for the purposes; 1st. To indicate that the bridge would be opened by hand?

A. Yes sir.

Q. Then it was also for the purpose of telling them that there was danger?

A. Yes sir.

Q. How would there be any more danger if you opened it by hand or by electricity?

A. If they had to open it by hand she would drift against the bridge.

Q. The effect of that is that — would be slower to open it by hand, that is the effect of it?

A. Yes sir.

Q. The only purpose of that flag was to notify the boats all boats going through the bridge that the bridge would be opened by hand, and that it will be slower than ordinary?

A. Yes sir.

Q. Otherwise there was no more danger in that action than if you were operating it by electricity were there?

177 A. No sir, I don't think so.

Q. Simply, more than anything else, as you understood it, to go slow, that you would go slow and that you would have to govern yourselves accordingly?

A. Yes sir.

Q. These signals no one knew anything about that except you and the captain of the Daring?

A. I don't think so.

Redirect examination by Mr. HOGAN:

Q. Did you see anybody raise that flag that day?

A. I didn't. Jake Gould says he did.

Q. You didn't see that?

A. No sir.

Q. You were busy?

A. Yes sir.

J. B. HAYNES being duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. Where do you live Mr. Haynes?

A. Aberdeen.

Q. State your name Mr. Haynes.

A. J. B. Haynes.

Q. Did you see this accident of the Norwood and the West bridge on the 7th of May last?

A. How?

Q. Did you see this accident of the Norwood when she struck the West bridge, the bridge across the Chehalis river?

A. Yes I was on the bridge at that time.

Q. Where were you?

A. I was on the north end, first pier on the north draw.

Q. North of the bridge?

178 A. Yes sir.

Q. How did you get to be there?

A. I went there on the street car.

Q. Where were you going?

A. To Cosmopolis.

Q. You were in the street car?

A. Yes sir.

Q. Came up there on the street car?

A. Yes sir.

Q. Who was with you?

A. The conductor, motorman and William Anstie.

Q. Well now Mr. Haynes state how the car came up there and how she stopped and what you saw of the accident and what took place.

A. I stepped off the car and walked out on the bridge on the side of the car and we had only been there a little time, the bridge opened, I then walked around to the car on the east side.

Q. Did you see the Norwood?

A. Yes sir.

Q. Where was the Norwood?

A. The Norwood was in the river below the bridge?

A. How far?

A. Perhaps 500 feet.

Q. Where was the Norwood when the bridge started to open?

A. About that distance below.

Q. Which way was she heading?

A. Towards the bridge.

Q. Towards the bridge?

A. The north side of the draw.

Q. And which way did the bridge open?

A. To the east.

Q. Which end opened to the east?

A. The north end.

179 Q. Well what did you do and what did you see there?

A. Just as the bridge commenced to swing, I walked over to the north side and my attention was then—I was looking towards Mr. Wilson's boat, all the time my attention was directed that way, I never saw or noticed what was going on so far as the steamer and the bridge was concerned.

Q. Where did you next see the Norwood, your attention was called to it?

A. I saw her on the south side of the draw.

Q. In what position?

A. The bow to the southwest.

Q. What position was the Norwood in after the accident immediately after the accident?

A. She was on the south side of the draw and her stern was towards the draw diagonally towards the southwest or towards Bryden & Leitch's mill and about that time I heard a sound.

Q. Did you see it strike the bridge or come in contact with it?

A. I never saw it strike, I heard it.

Q. How long did you stay there?

A. Not but a minute or two.

Q. Did you notice what effect it had on the bridge?

A. Yes I walked on to the south side and looked to see if it had effected the bridge and I discovered that it was out of line and I came away.

Q. When the bridge started to open state whether or not it moved, how long it took how fast it moved?

A. Well it moved about the same as usual.

Q. Well now where was the Norwood with reference, what point down stream, what object would you locate it with down stream, when the bridge started to open?

A. Just about straight below the north opening.

Q. Could you give the distance below by some reference to some object on the bank if there was any?

180 A. Not anything but the boom and the logs in it.

Q. How far below the bridge was the Norwood would you say, when the bridge started to open?

A. About 415 feet.

Cross-examination by Mr. Cross:

Q. You don't know anything about the whistles do you Mr. Haynes, the Norwood whistles?

A. I didn't pay particular attention on that day no sir.

Q. You were not on the bridge at all, you just came on the car?

A. No sir.

Q. And when you came up there the bridge was closed?

A. Yes sir.

Q. And you say you stayed there a few minutes, about how long do you think you were there before the bridge began to open Mr. Haynes?

A. Well sir a very short time I could not say just how many minutes.

Q. Five minutes do you think?

A. Possibly.

Q. And when the bridge began to open you noticed the vessel down stream?

A. Yes sir.

Q. Some four or five hundred feet?

A. Yes sir.

Q. About that time your attention was directed to Mr. Wilson's

premises, his booms or mill, which would be in the opposite direction of the bridge and the vessel both?

A. Yes sir.

181 Q. So just what took place after that up to the time the Norwood went into the south opening you don't know, you didn't see?

A. No sir.

Q. How long about do you think, was it or have you any impression as to the time after you observed the Norwood just below the bridge until you saw her backing into the south opening?

A. I should not think more than three or four minutes, between those two times that I observed it.

Q. The tide was pretty strong that day?

A. About a medium tide.

Q. Was the wind very strong?

A. No what we would call strong.

Q. You mean it was not a gale but just above the average wind do you think?

A. Not so strong as the winds usually are.

Q. Now when you next saw the Norwood she was lying in a diagonal position on the south opening?

A. Yes sir.

Q. At that time when you first saw her she apparently had not struck anything yet?

A. It was only a moment before she struck.

Q. You observed that situation before you heard what you thought was the stroke of the vessel against the bridge?

A. Yes sir.

Q. Which side of the bridge were you standing on Mr. Haynes I mean which side of the bridge as to east and west, I don't mean north and south.

A. I was on the—I don't remember how much, I had moved on that draw I think I was right north with the car track.

Q. That would be north of the center?

A. Yes a little to the north side.

182 Q. Did you observe any one trying to open the bridge when you first went there?

A. No sir I didn't.

Q. Did you see who was on the bridge operating it?

A. No sir I didn't.

Q. Did you observe any flag?

A. Yes sir I noticed a red flag.

Q. Where was that flag when you saw it?

A. It appeared to be somewhere in the center of the bridge.

Q. Was the staff a sticking in the hole?

A. I didn't notice the flag, I simply saw the red flag.

Q. You saw it as you looked through the bridge?

A. Yes just past the little house.

Q. You could see the streaming of the red flag out on the bridge?

A. Yes sir.

Q. As to how it came there and *and* what it was put there for you don't know?

A. No sir, I just simply knew the meaning of it that is all.

Q. Did you understand that that meant that the bridge would be opened by hand?

A. No sir.

Q. What did you think it meant?

A. Well I supposed it would mean to caution the vessels that there was danger ahead, that there would be a delay in opening and closing.

Q. You think it indicated that the bridge would not be opened?

A. It indicated a delay.

Q. It indicated a delay?

A. Yes sir.

Q. That is your understanding of that kind of signal?

A. Yes sir that is as I understand it.

183 E. L. HOUSER, being duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name?

A. E. L. Houser.

Q. Where do you live?

A. Hoquiam.

Q. Where were you on the 7th of May last?

A. In Aberdeen.

Q. What was your business?

A. Electrician.

Q. Who were you working for?

A. The Grays Harbor Electric Company.

Q. Did you have occasion to visit the West bridge? Across the Chehalis river that day?

A. I did yes.

Q. About what time of day?

A. I don't know I don't remember some time in the morning of the 7th of May.

Q. Did you see the Norwood that day?

A. Yes sir.

Q. What did you go over to the bridge for?

A. To repair the cable.

Q. Was there anybody with you?

A. There were two linemen.

Q. What are their names?

A. John Kile and Halverson.

Q. When you men got there Mr. Houser state what you saw there when you went there?

A. When we approached the bridge, myself and two other linemen, there were three of us altogether, we had been sent by the bridge company, and just as we got up there the bridge started to turn, the north end up stream, and Ed V

was holding—

Q. Where was the Norwood?

A. 600 feet from the bridge heading for the north channel.

Q. Did the bridge start to swing about what time did the bridge start to swing?

A. She started to swing after the Norwood started for the North Channel. After the Norwood changed her course.

Q. What sort of a turn did she make?

A. About a quarter circle.

Q. Which way was she heading?

A. It headed for Bryden & Leitch's mill and just about down the stream.

Q. And what did she do?

A. She started to go back through the south channel then.

Q. Did she strike anything?

A. Yes it struck the bridge.

Q. What part of it?

A. The long span on the south approach the west corner.

Q. How long a time elapsed between the time you got there and the time she struck the pier?

A. I don't know I was interested and did not pay any attention to the time.

Q. No- state clearly the situation as it was when you went up there on the bridge, what the condition the bridge was in and where the boat was and what the boat was doing?

A. I notice the boat was coming under slow headway.

Q. How far distant?

A. About 600 feet from the bridge, she started to change her course for the south channel she started to change immediately almost after we got on the bridge, when the boat started to change its course the bridge was just starting to swing. We had just started to get on the bridge.

Q. What do you mean when you started to go on the bridge, assuming this to be the south approach is that it, did you go upon the north approach?

A. Yes sir.

Q. And the Norwood was about how far down stream?

A. About 600 feet.

Q. Heading for the north approach?

A. North approach yes sir.

Q. Did the bridge move along without accident after that?

A. Yes sir.

Q. How rapidly did it open?

A. Well I have never timed the bridge but it opened as rapidly as usual, I understand it takes three minutes. There is only one speed to it.

Q. Did you see the flag out?

A. Yes there was a red flag out, sticking upon the bridge.

Q. What did you say about that flag?

A. I says yes sir.

Q. There was a flag upon the bridge?

A. Yes sir.

Cross-examination by Mr. Cross:

Q. Do you know what time it was that the bridge got out of repair?

A. No sir.

Q. How long before you went?

A. Immediately.

Q. You were not in the office when the word came?

A. No sir.

Q. You say when you got there the current was broken?

186 A. No sir, the current was fixed when we got there.

Q. It was fixed?

A. Yes sir.

Q. Did you have to do anything while you were there?

A. No sir.

Q. I believe you stated that Ed West was holding the cable?

A. Yes sir holding it into the switch box.

Q. Did you go to the switch box?

A. Yes sir.

Q. Did Ed leave the switch box after you got there?

A. Yes I believe he did.

Q. Who held the cable then do you know?

A. I don't know that he gave it to anybody it was not necessary, but I don't know whether he gave it to anybody or not.

Q. He had not fastened it had he?

A. He was holding it by hand at the same time it was fastened. It would hold itself.

Q. You don't think that there was any one holding it after that?

A. I don't say that they did. I don't remember I didn't pay any attention to that I was watching the boat.

Q. I believe you stated that the bridge had started to open when you got there?

A. Yes sir.

Q. Are you sure about that now Mr. Witness?

A. Yes sir.

Q. And how did Ed happen to let it go what did he let it go for?

A. I don't think he let it go before the bridge had swung.

Q. Don't you know the time you know whether or not he let it go?

A. Well he went and relieved the bridge from its fastenings so it could open.

187 Q. Did you see Ed relieve the bridge from its fastenings at all?

A. No sir.

Q. Were you there when he put the key in and connected the electricity?

A. No sir.

Q. You were not there then?

A. No sir.

Q. You heard the bridge start to open with the north end up stream?

A. Yes sir.

Q. Did you see any effort being made to open with the north end up stream?

A. Yes sir.

Q. Were they trying to open the bridge by hand?

A. No sir.

Q. Did you see any teams around there?

A. I didn't notice I didn't look behind me at all.

Q. Were there any foot passengers on the bridge at the time?

A. I don't know I didn't pay any attention to them, the only ones that I saw were the ones, I could not say for sure anything about it.

Q. As to whether the bridge had opened partially before you got there you don't know?

A. No sir.

Q. You say when you got there the Norwood was just changing her course about that time?

A. Just about, shortly after that, shortly after we got there she changed her course.

Q. You say you saw this red flag out?

A. Yes sir.

Q. When did you see the flag?

188 A. As the bridge was swinging the flag was going towards us, coming our way.

Q. You saw the flag by looking down the bridge southward?

A. Yes sir.

Q. About how long after you got there was it that you observed that the steamer had changed her course?

A. Well I could not judge the time, it seemed to changed shortly after we got there it could not be more than 2 or 3 minutes.

Q. Now you say she was some 500 feet away from the bridge when she changed her course?

A. I should judge about 600 feet of course that is only approximate.

Q. That is only approximate in your mind?

A. Yes sir.

Q. Did you observe her as she went across the channel?

A. Yes sir.

Q. In making the turn across the stream did the vessel drift towards the bridge?

A. Yes sir.

Q. How far was the vessel from the resting pier or dolphin when she crossed the stream at that point?

A. Well I don't know exactly I don't know how far.

Q. Do you know whether or not she came near striking that when she made that turn?

A. No I don't. I didn't see as she did.

Q. Were you paying particular attention as to the relative position of the vessel with the bridge when she was making that turn?

A. No I was not I was watching the vessel.

Q. Were you expecting that there might be a collision?

A. Yes sir.

Q. What did you think she would collide with?

189 A. The draw span.

Q. The draw span could not have been collided with could it if it was resting in its position?

A. The west pier of the draw span, of course if it struck that it would strike the pier also.

Q. Well you think there was a possibility of striking the draw span and the resting span on the south side?

A. Yes on the south side.

Q. And what part of the vessel did it appear was going to make that collision?

A. About mid-ships.

Q. It looked as if it would be mid-ships?

A. Yes sir.

Q. That is the position of the vessel with the bridge it looked as if it was going to drift into the bridge about mid-ships?

A. Yes sir.

Q. Now when was it that this condition of affairs presented itself to you, where were you?

A. On the north approach.

Q. And where was the vessel?

A. The vessel was in the stream on the south side.

Q. On the south side of the bridge?

A. Yes sir.

Q. Was she standing apparently across the stream at that time?

A. Yes sir.

Q. Did you see her cast anchor?

A. No sir I didn't.

Q. Did you observe her change the position in the stream with the stern swinging towards the bridge?

A. Yes sir.

190 Q. What position was the bridge in when she began to swing?

A. The bridge was about half open.

Q. When she began to swing her stern towards the bridge?

A. She was wide open.

Q. Wide open then?

A. Yes sir.

Q. Now you say you were on the north end?

A. Yes sir.

Q. Were you on the north end of the bridge? When the bridge was wide open?

A. On the north end of the bridge.

Q. You were standing out on the bridge and not on the swinging span?

A. No sir.

Q. So the whole bridge was between you and the vessel?

A. Yes sir.

Q. So you were some 300 feet away?

A. I don't thoroughly understand that question.

Q. I say you were some 300 feet from the vessel at that time?

A. At what time?

Q. From where you were standing when the vessel was swinging in?

A. Yes sir.

Q. Could you see plainly from this bridge structure just what was going on there, on the north side?

A. Yes sir.

Q. Now did you see the vessel backing?

A. Yes sir.

Q. Did you observe the force of the propeller in reverse order?

A. No sir.

Q. When she backed in first how was the position of the stern of the vessel relative to the bridge. I mean the swinging span?

191 A. When she first started to back?

Q. Yes sir, she was pointed to the center of the span, close to the center pier, close to it?

A. No sir.

Q. Could you tell how far she was away?

A. No I could not.

Q. Then from where you stood when the vessel first past- into the south opening the stern of her was directed toward the center of the draw span?

A. Yes sir.

Q. And she continued to back then did she?

A. Yes sir.

Q. And at the same time she was drifting?

A. Well I could not say, there was a very strong current running she may have drifted, I could not tell sure.

Q. Was the vessel swinging towards the south span at the same time she was backing. I mean towards the south approach?

A. Yes sir.

Q. How far had the vessel backed in before you saw it strike the south approach or rest?

A. It struck it about the time it backed in it had not gone any more than half her length, if that.

Q. That is the way you remember it?

A. Yes sir.

Q. How many times did it strike?

A. It struck once and remained there and drifted right around it.

Q. You think it struck the bridge and then remained against the bridge awhile and finally swung loose?

A. Yes or they worked it loose one or the other.

Q. Did you hear the Norwood whistle the second time?

A. I don't know whether it was the first or second time that I heard it whistle.

192 Q. Where were you when you heard it whistle?

A. We were about at Wilson's office.

Q. You didn't hear her whistle any more after that?

A. No sir.

Q. You walked then from Wilson's mill up to the bridge?

A. Yes sir.

Q. About how far is that?

A. About 500 or 600 feet.

Q. 600 feet?

A. About that or 500 feet.

Q. Walked at an ordinary gait?

A. No we were in a hurry.

Q. About how long were you going that distance?

A. I don't know I could not say.

Q. And then it was when you got to the bridge, I mean got to the swinging span that you noticed the Norwood or had you noticed her before?

A. I had noticed her before.

Q. Headed for the north span?

A. Yes sir.

Q. Now you are acquainted with this *motion* electric *motion* that opens this bridge?

A. Yes sir.

Q. How long, you know how it is applied?

A. Yes sir.

Q. You know the rapidity with which it operates?

A. No sir I don't.

Q. You don't know that?

A. No sir I don't.

Q. Have you ever made any observation as to how rapidly it would operate the bridge?

193 A. No sir. It operated very quickly but as to its exact speed I don't know, I never timed it.

Q. Could they make it fast or slow?

A. No sir if they gave it the slowest speed possible it is very fast.

Q. You had occasion to examine this bridge very often, this electric motor?

A. No sir.

Q. Do you know whether or not it is customary to get out of repair?

A. Only once.

Q. You mean that you had been called to repair this motor before?

A. Yes sir.

Q. How long before?

A. I don't know.

Q. And you never were on the bridge while it was swinging?

A. No sir you mean at the time this happened?

Q. Prior to the Norwoods going through?

A. Yes sir.

Q. On this particular day?

A. No sir.

Q. Never went on it before, at all?

A. No sir.

Q. So that your testimony as to what took place down at the cabin or ticket office is based on what you heard.

A. I don't know as I gave any testimony as to what happened to the ticket office.

Q. The cable is at the north approach?

A. Yes sir.

Q. And you didn't see Ed then going to the south end to raise the jacks?

194 A. When I came there the bridge was swinging and he was holding the end of the cable in the switch box.

Q. As to what took place prior to then you don't know anything about it?

A. No sir.

HAROLD HALVERSON being duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name?

A. Harold Halverson.

Q. Where do you live what is your business?

A. I live at Aberdeen, Washington, at the present time.

Q. Your business is what?

A. Electric work.

Q. Did you have occasion to visit the West bridge on the 7th of May last?

A. Yes sir.

Q. Is that the time the Norwood run into the pier?

A. Yes sir.

Q. Who went with you?

A. Ben Houser and Jack Kile.

Q. You three?

A. Yes sir.

Q. What was your business up there at that time?

A. We were called for to go over there that the bridge had, the bridge was out of order or something like that.

Q. Did you see the Norwood that morning?

A. Yes sir.

Q. Where were you when your attention was called to it?

A. To come to the bridge do you mean?

Q. Where were you when your attention was called to the Norwood when you saw it first?

195 A. I was going onto the bridge or approach.

Q. Onto the bridge or approach?

A. Yes sir.

Q. Which way were you going on to the bridge?

A. On the north side.

Q. And where did you see the Norwood?

A. About the mouth of the Wishkah river.

Q. How far down?

A. About 800 feet.

Q. Which way was she moving, the Norwood?

A. She was going up the river heading east.

Q. Could you tell *way* towards which opening of the bridge she was heading?

A. To the north side.

Q. Now you may state Mr. Halverson when you walked up to the bridge what position you found the swinging span and where the Norwood was and just as it appeared to you at that moment.

A. The moment that I was at the end of the approach?

Q. I mean to the span that opened.

A. When I was at the end of the approach the span had started and the west side I could say on the north end of the span of the bridge had past by to the east side, when I got to the end of the approach.

Q. State whether or not it continued to move?

A. It kept right on moving.

Q. Did it continue to open without any accident?

A. Yes sir. At that time when the west end of the bridge or west side of the bridge was passing the east side of the approach I saw the Norwood in the stream down the river then a short distance.

Q. How far down?

A. It was in a distance of six or eight hundred feet. Somewhere along in there.

Q. And which way was she heading at that time?

196 A. She was then heading to go through on the north side.

Q. And how long did she continue that course, how far did she proceed in that course.

A. Until she was pretty well up to the pier there until she was pretty well up to the center pier.

Q. Until she was pretty well up to the center pier?

A. Yes sir.

Q. Then what did she do?

A. She changed her course to the south.

Q. At the time she changed her course to the south how far open was the span?

A. Well it was pretty well open, so that she could have went through there.

Q. How near open would you say?

A. About two-thirds open.

Q. About two-thirds open.

A. No three-thirds.

Q. That would be completely open.

A. No it would be two-thirds open, then if that would be completely open.

Q. What maneuvering did the vessel go through after that; give the court a clear idea, how the thing occurred after that, if you can. Just as if you were trying to tell how it happened.

A. Well after she turned her course she headed to the south and swung a little so that she struck the pier with her side, midships and turned into the bridge stern first.

Q. How long a time elapsed after she changed her course to the south and swung around and struck, how long an interval?

A. It would be between three and four minutes. I should judge that as about the interval.

197 Q. When she backed or attempted to back, there to the south opening in the bridge, what direction was her bow or forward and pointed?

A. As she was passing through you mean?

Q. As she backed through and struck the pier, how did the vessel lay with reference to the stream?

A. Well it laid on this angle, kind of heading towards that mill to the S. W. I should judge.

Q. What mill is that?

A. I don't know, I don't know what company it is.

Q. Did you notice how far west of the resting pier of the bridge she passed when she changed her course to the south, assuming this to be the bridge, and where you are here is the resting pier up and down the pier, how far west of that was she when she moved to the south, if you noticed?

A. Well about 400 feet I should judge.

Q. When she made that turn?

A. When she turned she was 400 feet.

Q. How near it did she come to that center pier when she passed south, there is the center pier (indicates)?

A. She came about 200 feet from the end I think.

Q. Did you see a flag there Mr. Halverson?

A. Yes sir.

Q. Where was it?

A. It was a little to the south of the office there on the bridge.

Cross-examination by Mr. CROSS:

Q. All these calculations as to time and distances are imaginary, that is as you remember them now, you didn't make any particular note of time or distance at the time the accident occurred did you?

A. No sir.

198 Q. So that it is a matter of judgment now, as you look back at the circumstances then?

A. Yes sir.

Q. As a matter of fact the Norwood may have been right up to that pier when she crossed the river, may she not?

A. No sir.

Q. You don't think this possible?

A. No sir.

Q. Now when she crossed the river did she drift toward the bridge did she drift any in crossing the river?

A. Yes some.

Q. Did she drift in to the south opening or how did she go there?

A. Well she drifted in side ways some what.

Q. Into the south opening?

A. Yes sir.

Q. Now the vessel never stopped did it from the time it started to change its course until it went through the bridge, stern first?

A. No sir.

Q. It was in motion all the time coming in the direction of the bridge?

A. Yes sir.

Q. So that from the time that she changed her course until the stern of the vessel had passed the pier she had drifted to the bridge past the center pier had it—is that what you mean?

A. Yes sir, yes she drifted some.

Q. Was there any other way to get to the bridge excepting to drift in that position?

A. No I don't think so.

Q. Now, how far was the stern of the vessel from the center pier south when she drifted past the pier?

A. Well I don't know.

Q. Was not she right close up, didn't they think she was going to hit that resting or center rest?

199 A. Yes sir. I could not tell I didn't or don't know how far she was away.

Q. You were how far away?

A. About five hundred feet.

Q. Where were you?

A. I was on the north approach.

Q. So that the superstructure of the bridge was between you and the vessel?

A. Yes sir.

Q. So that all you could see was the vessel the position of the vessel in relation to the stream?

A. Yes sir.

Q. Now when you got to the bridge was the current on then?

A. Yes sir.

Q. And they had started to open the bridge?

A. Yes sir.

Q. And how far was the bridge open when you got there?

A. Well the west side of the draw on the north end was just passing the east.

Q. Did you see that bridge when it started to open?

A. No sir I was not there just at that moment.

Q. The bridge had been opening when you was going up the approach?

A. Yes sir.

Q. Had it started to open the first time you saw it?

A. Yes sir.

Q. How far were you away when you could see the bridge?

A. Well about 200 feet as we was coming up onto the approach.

Q. So that it had been swinging while you were coming this 200 feet?

A. Yes sir.

200 Q. While you were walking that 200 feet the bridge had swung about the width of the approach?

A. Yes sir.

Q. How wide is the bridge?

A. I don't know the width of the bridge.

Q. You had a general idea I don't ask you to state to a foot.

A. About 20 feet I should judge.

Q. It had opened then something like 15 or 18 feet and had not quite passed the corner of the approach?

A. No just about passing it.

Q. You say there was a strong current?

A. About a medium current.

Q. How about the tide?

A. The tide was about half.

Q. About half tide?

A. Yes sir.

Q. That was running in the direction the vessel was going?

A. Yes sir.

Q. Did you notice the force of the wind?

A. I think it was northwest wind.

Q. Now as to being strong or otherwise?

A. No it was about medium I should judge.

Q. So your attention turned to that particular, at that time?

A. No not so particularly.

Q. When you came up there did you see this red flag out?

A. Yes sir.

Q. You saw that flag by looking down the bridge, southward?

A. Yes sir.

Q. In the inside of the bridge?

A. No, it was on a rail.

201 Q. The flag itself was streaming out into the gangway of the bridge?

A. Yes the way the wind blew it.

Q. That is the way the wind blew it out on the bridge or the roadway?

A. Yes sir.

Q. How long a time from the time do you think it was *from the time* you first saw the bridge until you got to the bridge that is first saw it in an opened condition?

A. I don't know a minute or two I should judge.

Q. How far was it open when you first saw it?

A. Well it was opening it started before I had got there.

Q. The first impression that you have or got of the bridge is that it was opening is that right?

A. Yes sir.

Q. Did that impression come to you by reason of the fact that you thought it could be operated, did that make any impression on you at the time seeing it opening?

A. Yes sir.

Q. Did you understand that it could be opened without your aid, or without the repairs that you were going to make?

A. Why I didn't understand anything of that kind.

Q. Did you know the bridge could or could not be opened without electricity?

A. It could be opened by hand.

Q. You knew that?

A. Yes sir.

Q. So that the fact that you saw it opening didn't surprise you?

A. No sir.

Q. You could not state how much it had opened, whether three, five, or six feet, or any number of feet; you are acquainted with the bridge aren't you, well acquainted with it?

202 A. Not well acquainted with it no.

Q. Could you state how many feet it was opened when you first saw it?

A. About half across.

Q. So that it had opened about ten feet while you were walking the 250 feet?

A. About 200 feet.

Q. And you think you were about two minutes walking the 200 feet you were walking up grade were you not?

A. Yes sir up grade. As to the time I didn't notice exactly it took about a minute and a half or two minutes.

Q. Did it continue to open at the same rate when you saw it opening in the beginning, apparently?

A. Yes sir.

Q. That vessel is a large vessel isn't she, the Norwood?

A. She is a large schooner, I don't know the length of her or anything of that kind.

Q. You think that she was five or six hundred feet away when you noticed her or observed her?

A. About 800 feet I should say about 800 feet.

Q. About 800 feet when you first observed her?

A. Yes sir.

Q. Had she whistled the second time then?

A. Yes sir. It whistled at that time that is about the time I saw her.

Q. She didn't whistle any more after that?

A. No sir.

Q. You say she continued her course for a few hundred feet and then changed it?

A. Yes sir.

203 Q. You think she was about 400 feet or about 600 feet from the bridge when she changed her course is that your estimate?

A. No she was closer than that.

Q. About how close do you think?

A. She was pretty near when she changed her course, she was about between three and four hundred feet.

Q. And at the time she changed her course you think the bridge was standing partially open that is it changed, when it had gotten partially opened perhaps two-thirds I believe you said?

A. Two-thirds yes sir.

Q. That is a matter of guess work isn't it?

A. I am sure the bridge was two-thirds open when the boat turned.

Q. You didn't look at the vessel and then the bridge did you?

A. No, I don't remember.

Q. How did you or do you know, was your attention turned to the vessel or the bridge.

Q. The moment he turned I notice- the bridge two-thirds open.

Q. You say the moment he turned, could you state, a large vessel like that the moment he turned, the moment, now when you say you noticed he made the turn Mr. Witness, to be fair with you as well as the court, what position were you in when you say you saw her make her turn, that is when she started to make her turn, what angle were you with the bridge?

A. She was turning off this way to the south.

Q. About what angle was she with the bridge then? When you say you observed she was turning or had turned, about what angle was she with the bridge?

A. Just about square.

Q. With the draw?

A. Yes sir.

Q. That is when she was headed for the bridge, was she right angles to the bridge, you mean she was broad side to the bridge?

204 —. Yes sir.

Q. That was when you say you observed that the bridge was two-thirds open that the vessel was broadside with the bridge?

A. Just as the boat started to turn I noticed the bridge was two-thirds open just as she started to turn.

Q. Started, that is what we are trying to find out.

Mr. HOGAN: We submit that the witness has answered that.

COURT: Go on again.

Q. Do you understand angles and divergencies? Have you any idea as to angles, degrees of angles and so on?

A. I have some.

Q. Do you know how many degrees in a circle?

A. I don't.

Q. If you don't think you could give it by degrees Mr. Witness could you mark it on a piece of paper. Assuming that this is the bridge, this is one end of the draw span swing and this is down stream and this is up stream and the vessel coming up here somewhere (indicating), can you give or indicate there the position of the vessel relative to the bridge or the stream when you say she changed her course? I don't mean on that side this side here.

A. The vessel was about on an angle (indicated by a straight line by the witness.)

Q. This mark that you have made on paper as indicating the position of the vessel relative to the bridge at the time you say you recognized her changing her course is at an angle with the bridge at about 45 degrees was it not?

A. I don't know as to the degrees.

Q. About a quarter of a circle?

A. It just started to turn here.

205 Q. Then in undertaking to say in degrees you would say then it was about 40 degrees?

A. About one-quarter turn.

Q. Was that, so that the bow of her was about half turn to the right?

A. Yes sir.

W. W. ANSTIE being duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name and place of residence?

A. W. W. Anstie, Aberdeen, Washington.

Q. Where were you on the 7th of May last?

A. Aberdeen.

Q. Were you near the West bridge any part of that day?

A. Yes sir I was on it.

Q. About what time of day were you there, how did you happen to go there?

A. I don't remember the time of day now. I was on my way to Cosmopolis on the street car.

Q. Did you see the Norwood that day?

A. Yes sir.

Q. Where were you when you saw the Norwood?

A. I was in the street car on the bridge.

Q. What place on the bridge?

A. Well it was on the approach, this side of the span going across.

Q. On the north approach?

A. Yes sir.

Q. Did the car stop there?

A. The cars stopped when she got up there.

Q. Why did she stop?

206 A. The boat whistled to get through the bridge.

Q. Where was the Norwood then, when she whistled?

A. She was about at the mouth of the Wishkah river.

Q. Which way was she going?

A. Towards the bridge.

Q. On which side of the stream?

A. The north side.

Q. Towards which span of the bridge?

A. Towards the span this way, the north span.

Q. That is the north span?

A. Yes sir.

Q. What if anything did you see going on toward opening the bridge?

A. Why the man who is connected with the bridge started to open it, there was a couple of men working on this end.

Q. Did you get out of the car?

A. Yes after while.

Q. How soon after you got there did the bridge start to open?

A. My recollection is they started nearly right away.

Q. And where was the Norwood when the bridge started to open?

A. She was about opposite West's mill possibly I should say about 8 or 900 feet from the bridge.

Q. Which way did the bridge open?

A. Up stream.

Q. The span up stream, which end?

A. The north end.

Q. Did the bridge open right along?

A. As far as I could see. A little over half way.

Q. State what the Norwood did, you say the Norwood was 8 or 900 feet west of the bridge when the bridge started to open.

A. She came along and then she started across on an angle for the other span, I made a remark to Mr. Tanner——

207 Q. How near open was the bridge when she started to change the course to the south?

A. It was half open before she started. I don't know how far she was open when she went across, I was not looking at the bridge then.

Q. What sort of an a-gle did the boat turn whether abrupt or otherwise?

A. No it was not abrupt.

Q. How—what did the vessel do then?

A. Well she went over that way and I went around and go on the street car, I didn't see the vessel hit the bridge.

Q. You went back to Aberdeen?

A. Yes not just then. I got on the street car I got into conversation, I think with Mr. Haynes.

Q. You were not looking when she struck the bridge?

A. No.

Q. What position was she in when you last saw her?

A. The stern was up against the bridge. She was not against the bridge but was about twenty feet away from it. I supposed of course it struck and I went back.

Q. She had struck in the mean time?

A. Yes sir.

Q. Did you take any notice whether or not the bridge was out of line or not?

A. Yes sir.

Q. How was it?

A. Leaning over up stream.

Q. Did you see the fall there that day?

A. Yes sir.

Q. Where was it?

208 A. I think about in the center of the bridge.

Q. What sort of a day was that?

A. I am not positive but I think it was a fair day, I had no umbrella.

Q. Do you know what stage of the tide it was?

A. No I think the tide was running in. I didn't pay much attention to it. I would not say positively to that.

Q. What did you say about the wind?

A. I didn't notice about the wind there is always more or less wind about the bridge there.

Q. I will ask you where you were when the Norwood whistled that day.

A. I think that we were getting up the approach, when she whistled first.

Q. How near from where you stopped?

A. Eight or nine hundred feet.

Q. When she whistled first you say?

A. Well I don't know but what she whistled before probably at the dock.

Cross-examination by Mr. Cross:

Q. Do you remember of hearing but one whistle of the Norwood?

A. No I think I heard two.

Q. You would not be sure of that?

A. No I could not swear that it was the Norwood, but I think it whistled before we got on to the bridge.

Q. She didn't whistle after you got up to the draw span?

A. No it was before that.

Q. The only whistle that you know of that she did make was at the mouth of the Wishkah you think?

A. I think there was one at the wharf.

209 Q. Where was she when you first saw her?

A. She was either opposite the Burrows wharf or at the Wishkah river. I didn't pay much attention to it as I—I could not swear positively.

Q. You say it is about how far from the drawbridge to where you were when you heard her whistle at the mouth of the Wishkah?

A. I could not say as to that.

Q. Approximately where were you on the car to where you heard her whistle up the Wishkah?

A. It might be possibly 100 yards more or less, 300 feet.

Q. Then the vessel was continuing to go towards the bridge all that time was it? Or did you notice.

A. She was slowed up and didn't seem to have any headway.

Q. Moving very slowly?

A. Yes if at all, I think she was moving a little.

Q. Now were you onto the draw span, you say you observed the men on the bridge?

A. Yes sir.

Q. Do you remember who you saw on the bridge then?

A. I know, but I could not have sworn if I didn't find out since.

Q. What were they doing there then?

A. Well sir at the time I supposed they were running the one that I seen seemed to lift up the clutch of the bridge that they have on some of the bridges, or to loosen up the bridge so as to swing it.

Q. That was the maneuver preparatory to swinging it?

A. Yes sir.

Q. The bridge was entirely closed then when you got there, that is the bridge was closed when you got there?

A. Yes sir.

Q. And which end of the bridge were they attempting to remove?

210 Q. Do you know whether or not the south end had been removed before that, do you know whether or not any of the tenders of the bridge removed the south end after that?

A. No sir.

Q. What were the other men doing do you remember?

A. No I don't I didn't take notice in fact at this time we were in the car we could not see the whole bridge.

Q. About how long had you been in the car before the bridge began to open?

A. Well I think it opened right away, we got out on the bridge or approach and the bridge was opening them, after we got out of the car.

Q. After you got out of the car?

A. Yes sir.

Q. And how long did you stay in the car do you think, after she landed?

A. After the car got there?

Q. Yes.

A. I don't think over a minute we got out and looked at the boat and got out and had a conversation again.

Q. The boat still going towards the bridge at that time?

A. Yes sir.

Q. Did you see her when she had changed her course or afterwards?

A. Afterwards.

Q. She was practically broadside with the bridge when you saw her?

A. Not exactly broadside, 45 degrees or something like that.

Q. Did you notice the vessel then as you got off of the car?

A. Yes sir.

Q. Was that just as she headed across the channel?

A. Within a minute or two.

211 — So that the turn of the vessel across the channel and the beginning to open the bridge were practically simultaneous acts as far as you can remember?

A. A minute or two at the time she commenced to turn or go across.

Q. Did you say that it was not more than a minute?

A. A minute or two.

Q. What do you mean when you say she was standing 45 degrees, at an angle of 45 degrees?

A. About half open.

Q. How long would it take for a bridge to get that far open?

A. It would not take very long.

Q. A minute?

A. No.

Q. It would open practically in a minute?

A. I should think so.

Q. As I understand you stated that the bridge was about half open when you observed the Norwood standing at an angle of 45 degrees across the stream?

A. The bridge was about half open and it would take about a half a minute for the bridge to get in a closed position.

Q. Do you think so?

A. Yes sir I think so but you must remember that I was on the right side of the car and could not see the draw at least until after it was half way past.

Q. It was half way open when you observed it?

A. Yes sir.

Q. That is when you observed the Norwood in that position?

A. No a little after that a minute or two afterwards.

Q. As I understood you a moment ago the bridge was about half open when you saw the Norwood standing at 45 degrees across the stream?

A. It was not stationary you understand it was keeping on going.

212 Q. It had gotten that far around?

A. Yes that far anyway.

Q. Now you don't know how close the Norwood was when she changed her course, you didn't see her change her course?

A. Well almost when she was at an angle it was about the time she changed.

Q. And for a boat of that size it would take how long to turn?

A. It would turn pretty quick.

Q. You supposed it was going to turn around to back into the other side?

A. That is what struck me at the time yes sir, turn the vessel around and back in the south opening.

Q. Do you know how far she stood out in the stream when you observed her?

A. At which time?

Q. When you saw her last standing at an angle of 45 degrees.

A. 5 or 600 feet I should think. Distance over water is hard to tell, that would put it something like 200 feet from the pier.

Q. At this time would the bow be southward of the pier the west rest of the bridge?

A. No I think it was about on a line with it, with the north side abutting.

Q. Then you didn't see her any more until she backed into the bridge?

A. I stepped into the car and some of the boys said it struck the bridge.

Q. No- this flag that you saw *you saw* was stationary was it?

A. No I think somebody was swinging it, I didn't pay much attention to it.

Q. You would not be sure that it was swinging or waiving or stationary?

213 A. I am pretty sure it was waiving.

Q. If the flag was waiving about what time in this incident was it waiving if you know, or if you remember.

A. Just as they were ready to stop the car.

Q. That would be then when the Norwood was some six or eight hundred feet away?

A. I think more than that down at the mouth of the Wishkah.

Q. If she had whistled the second time, that is after she whistled

this time you refer to, you don't know whether it was the first or second time or not?

A. I think it was the second time, about the same time, of course it was a pretty long time ago, you know.

Q. You had come up on that approach in the meantime, you had come up on the approach and how long had you been there?

A. Pretty fast, 15 or 20 seconds.

Q. How long had you been there when you noticed this flag waiving?

A. Not very long.

Q. You didn't know whether it was in somebody's hand or stationary.

A. No I would not swear to that.

J. B. SHELLEY being duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name and place of residence Mr. Shelley?

A. J. B. Shelley, Aberdeen.

Q. Where were you on the 7th of May, 1906?

A. I was in South Aberdeen at our store.

Q. Did you see this accident of the Norwood coming in contact with West's bridge across the Chehalis river?

A. Yes sir.

214 Q. Where were you at that time?

A. I was standing in the store door. I heard the vessel whistle *whistle* on the other side of the bridge and we watched her as we watch these boats and see where they run, we go aboard and sell supplies. I don't know which vessel it was at the time.

Q. Did you hear the vessel whistle for the bridge?

A. Yes I heard it whistle.

Q. How many times did you hear it whistle?

A. I only heard it whistle once, it whistled that time three or four times, I think four times for the bridge.

Q. One signal?

A. Yes sir.

Q. Where was the boat at that time?

A. They left the dock and started as though it was going up on the north side and I made up my mind and concluded that it was going to land at Wilson's dock, if so we were not going to pay any attention to it and it kept on up and the bridge was swinging, the north end of the bridge was swinging up stream, and when it got within I should judge, I don't know, 4 or 5 hundred yards of the bridge it took a turn the other way to go up around to the south channel it looked to me like that from where I stood.

Q. Now how far away in your judgment was the Norwood from the bridge when the bridge started to open?

A. I could not tell very much about the distance, I can't tell the distance very well on water, I think perhaps 900 or 1000 feet.

Q. You had a broadside view?

A. I had a view right something like this (indicated).

Q. Did you notice how far the bridge had opened before the Norwood changed the course to the south?

A. No not exactly it had started to swing and had swung open quite a little open, the south end of the bridge the end towards
215 me had swung past the approach, I noticed that much I don't know how far.

Q. And what, at that time the Norwood looked broadside, she was how far from the bridge?

A. It started for the lumber company dock I suppose four or five hundred feet from the bridge.

Q. Did you see any flag that day on the bridge, that day?

A. Yes sir.

Q. What do you say in relation to the flag?

A. I saw a man or boy I could not tell whether it was a man or boy and I noticed the flag and I noticed the boat making a turn so I supposed it was some signal I didn't know what though.

Q. How far was the Norwood from the bridge when you saw the flag waving?

A. I expect 5 or 600 feet, perhaps more than that.

Cross-examination by Mr. Cross:

Q. The Norwood at the time you observed the bridge beginning to open was some 5 or 600 feet from the bridge, you think?

A. What did you say?

Q. I say you think the Norwood, at the time the bridge began to open was some 5 or 600 feet from the bridge?

A. No I said 5 or 600 feet from the bridge when it turned to go to the south side.

Q. Was that where the vessel was *then* you noticed this flag waving?

A. No the flag commenced to waive before she was turned and went across the other way.

Q. That is about the time she saw the flag out?

A. Yes sir.

Q. You saw the flag waving?

A. Yes sir.

216 Q. And that is the time that you saw her change her course?

A. Yes sir.

Q. The changing of her course it changed, substantially, after the waving of the flag?

A. I don't understand you, I said if she changed her course, I don't know how long the flag had been out there, I mean the waving of the flag in somebody's hand.

Q. Did you see it while it was stationary?

A. Yes by the house.

Q. You saw it there?

A. Yes sir.

Q. Did you see this man take it out of the hole?

A. No.

Q. Did you see him running out and waving a flag at the end of the bridge? At the south end?

A. Yes sir.

Q. At the time that he was waving this flag the vessel was making towards the bridge?

A. Yes sir.

Q. And following this waving of the flag the vessel changed her course to the southward?

A. No she changed her course before that, she ran across and turned into the south channel, she ran across down perhaps 900 or 1000 feet below, opposite Leitch's dock. And when she turned down I noticed the flag.

Q. And so that the vessel as you remember it, was swinging with her stern towards the bridge when the flag was waved?

A. No it didn't swing the stern until she cast anchor?

Q. Did you see her cast anchor?

A. No I saw her turn.

Q. What position was the bridge in the stream?

A. The bridge was probably half open at the time so that
217 the vessel got through after it struck the bridge, it got through on the south channel.

Q. The vessel was near the mouth of the Wishkah when you heard her whistle?

A. Yes near the mouth of the Wishkah.

Q. Then she moved straight forwards you say, as if to pass through the north side of the bridge?

A. Yes sir.

Q. Until she got then how many feet of the bridge?

A. I should think 8 or 900 feet, down opposite the Leitch's dock I don't know the distance there.

Q. About what portion of the distance from the mouth of the Wishkah to the bridge was she, one-half, or one-third or what?

A. About half way.

Q. About half of the distance from the Wishkah to the bridge?

A. Yes sir.

Q. When she changed her course?

A. Yes sir.

Q. Had the bridge started to open when she had changed her course?

A. Yes sir.

Q. Had this flag been waived then?

A. I had not seen any flag then.

Q. You had not seen any then?

A. No not then.

Q. Then when you did see the flag the vessel had changed her course and had gotten opposite the south side of the swinging span?

A. Yes making for the south channel with her bow forward apparently.

Q. With her bow forward?

A. Yes sir.

Q. You took it as indicating that she was going bow forward through the south side?

A. Yes sir.

Q. And this was the position that she was in when this flag was waving?

A. Yes sir.

Q. And what position was the bridge in then, one-half or a third open?

A. The bridge was about one-third open, I should judge one-third open, then I saw some one on the north end of the bridge waving a flag.

Q. The bridge was about one-third open when you saw the man waving the flag?

A. Yes as I remember it.

Q. That was a red flag was it?

A. Yes sir.

Redirect examination by Mr. HOGAN:

Q. What sort of a day was that Mr. Shelley?

A. I don't understand you?

Q. What was the condition of the weather?

A. I don't recall the condition of the weather, I think it was, I am not certain about the weather I don't recall about it.

Recross-examination by Mr. CROSS:

Q. You are standing about how far from the south bank of the river?

A. Just across the street Mr. Cross, from the river about 100 feet. To the east of the approach of the bridge where our store is about, 100 feet east of the south approach of the bridge about 100 feet from the river bank.

Mr. CROSS: Of course we have the other distances here on the measurement of the bridge.

219 JOHN KILE being duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. What is your name?

A. J. L. Kile.

Q. What is your business?

A. Lineman.

Q. Where were you on the 7th of May?

A. Aberdeen.

Q. What business were you engaged in then?

A. Working for the Grays Harbor Electric Company.

Q. Were you in company with Mr. Houser and Mr. Halverson, and go over to the West bridge that day?

A. Yes sir.

Q. Do you remember what time of the day that was?

A. About 11:45.

Q. When—did you see the Norwood that day?

A. Yes sir.

Q. Where did you see her?

A. When I first saw her she was down about the mouth of the Wishkah river or close to there.

Q. Where were you?

A. I was up on the bridge.

Q. You were one of the men that came there, to connect up the electric wiring on the bridge, were you not?

A. Yes sir.

Q. What position was the bridge in when you went on there, what shape was it in?

A. Well they were opening it, the bridge, as I went upon there.

Q. They were opening the bridge?

220 A. Yes sir.

Q. Which way did the bridge open?

A. It opened up to the left, up stream.

Q. The end towards you, the north end?

A. Yes the north end up stream.

Q. And where was the Norwood at that time, when the bridge started to open?

A. She was quite a ways of- there right this side of the Wishkah river at that time.

Q. Which way was it heading?

A. Heading east I believe. East or northeast.

Q. Towards which opening of the bridge?

A. Towards the north.

Q. How long did she continue in that course?

A. I don't know, four or five minutes.

Q. How far did she move in that direction, did she change her course?

A. Yes she changed her course when four or five hundred feet from the bridge, she edged to go across below the bridge, changed her course.

Q. How near was the bridge open as you noticed it at that time? As she changed after going across?

A. Well I should say very near open I should judge say two-thirds or something like that.

Q. Do you know what caused the vessel to change to the south?

A. No.

Q. What occurred after she changed her course to the south?

A. Well she drifted in and hit the bridge then hit the pier on the other side, and knocked it down.

Q. Now if the bridge started to move state whether or not it moved clear open without incident or hitch.

221 A. Yes he kept on going and got it clear open.

Q. Do you know the ordinary speed of opening the bridge?

A. No I don't know I never paid any attention to that.

Cross-examination by Mr. Cross:

Q. Were you with these other bridge men or electric men, how many of you were together?

A. Three of us.

Q. Who are they?

A. Halverson, Hourser and myself.

Q. Were you walking or riding?

A. We were walking.

Q. Did you see the Norwood when you came on the bridge from the north side?

A. Yes sir.

Q. Where was she then?

A. She was down to the Wishkah river, down about there.

Q. Had she whistled before or after that?

A. Well she whistled about the time that we got onto the bridge.

I think it was about when she was at the Wishkah river.

Q. That is about the time that you got on the bridge you mean?

A. Yes on the bridge, or approach.

Q. At the north end?

A. Yes sir.

Q. That was the first thing that attracted your attention?

A. Yes sir.

Q. Do you know how long this bridge had been working, out of working order with its machinery?

A. No sir I don't.

Q. Now when you got up to the bridge or approach, I mean up to the swinging span, who did you see there or find there?

222 A. I don't remember finding anybody there only one of the fellows working on the bridge, a young fellow.

Q. Mr. West's son?

A. Probably so, I don't know his name.

Q. A young looking man?

A. Yes sir.

Q. What was he doing?

A. When I saw him he ran and jumped on the bridge as she was leaving the other side.

Q. Was he on the approach or on the swinging span when you saw him first?

A. He was on the approach, just as I got there upon there, he got on the approach.

Q. Had he got up on a bicycle just about that time?

A. Not that I know of.

Q. Did you see any one holding the cable when you went there or got there?

A. I didn't notice any one.

Q. Now when you got to the swinging span she was still coming heading for the north opening of the bridge is that correct?

A. Yes sir.

Q. And when you got to the swinging span, how long had you

been at the swinging span, how long after you got there was it before the Norwood or after she changed her course that you saw her?

A. I don't know just how long it was, it was not very long.

Q. It was after you got there?

A. Yes sir.

Q. About how far was she from the bridge when you noticed that she had changed her course?

A. Between three and four hundred feet I should judge, I could not say, exactly.

223 Q. When you got to the bridge did you say there was not any one holding the cable?

A. I didn't see any one holding a cable.

Q. Did you come onto the swinging span at all?

A. No.

Q. Never went on to it?

A. I went on it after they opened it and turned it back?

Q. I mean when the Norwood was there?

A. No.

Q. Did you see Mr. West relieving the jacks or any man on the bridge relieving the jacks?

A. No.

Q. You didn't see that?

A. No sir.

Q. The bridge when you got there you think had started to open?

A. Yes just opening nearly open the left side of it.

Q. Mr. West went onto the approach after you got there?

A. No I was going up as I seen him getting on and it was getting open then, it was something like this (indicating), close enough for him to jump on.

Q. What position was the bridge in when you first saw it?

A. They were opening it.

Q. Partially open?

A. Yes sir.

Q. She was still standing in the approach way was she?

A. She was just leaving the approach just leaving.

Q. How far were you from the span when you saw that?

A. Eight or ten feet I guess.

Q. Did you look toward the bridge or look towards the bridge when you first went upon the bridge from the north?

224 A. Yes I was looking towards the bridge.

Q. Did you see her start to open, was that when you first saw her?

A. Yes I was going up there then.

Q. Did you see her pass before or after, do you remember of having seen the end pass before you as you looked forward toward the bridge?

A. I saw the end pass the approach, yes.

Q. You saw the end pass the approach?

A. Yes sir.

Q. Where were you when you saw her start?

A. She had already started when I got there, when I noticed it.

Q. Well you didn't notice it then until after it had gotten ten feet off the approach or something like that?

A. Yes sir.

Q. The first time you saw it was when it was pretty well past the approach?

A. Yes sir.

Q. As to how long she was getting into that position you don't know?

A. I don't know.

Q. Now the Norwood did you observe her pass across the channel?

A. Yes I saw her cross over to the other side.

Q. How far was the Norwood from the bridge rest or dolphin on the west of the bridge when she past- going towards, going southward?

A. I told you a little while ago it was between 4 and 500 feet.

Q. When she changed?

A. Yes sir.

Q. She was drifting towards the bridge all the time as she went across?

A. Yes sir.

Q. Did you watch her drift up to the bridge?

A. Yes sir.

225 Q. Were you watching her all that time?

A. Yes sir.

Q. Now when you say you was four or five hundred feet away when she turned do you mean she was 4 or 500 feet from where you stood?

A. Away from the bridge itself, bridge proper.

Q. Bridge proper?

A. Yes sir.

Q. Did you observe the relative position of the vessel?

A. No.

Q. Didn't notice that?

A. No.

Q. Did you see any waving of a flag?

A. I didn't notice any flag.

Q. Was there any confusion on the bridge?

A. No no confusion.

Q. Everything seemed to be working in the ordinary way?

A. Everything was working quite as it would ordinarily.

Q. What were they doing down at the house you didn't know?

A. No I didn't. I was not around there, when I say at the toll house I mean I wasn't down at the house.

Q. Did you go on the bridge after the Norwood went through?

A. After they swung the bridge back I went on.

Q. Did you do any work on there?

A. No not any.

Q. So that you paid attention or could you see from where you stood the motion of the vessel as she was going around to the south opening?

A. You mean after she drifted through?

Q. Yes sir.

226 A. No there was no motion at all when she drifted through.

Q. Did you see her cast anchor?

A. No I didn't notice any anchor.

Q. You don't know whether she did or not?

A. No I didn't pay any attention to that.

COURT: I think you may not call any more witnesses for the purpose of showing how the collision occurred, we will have to limit you both on that.

Mr. HOGAN: I have several others along the same line, four or five.

COURT: I don't think we could hear so many.

Mr. HOGAN: If the Court would take a little recess some of the witnesses I would like to see, I have not talked over much with them.

COURT: We will take a ten minutes recess.

Mr. HOGAN: I want to call several witnesses that observed it from different positions, I have some that observed it from the Bryden & Leitch Mill dock.

COURT: All right.

JOHN LEITCH being first duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name business and residence?

A. John Leitch, Aberdeen, engineer business.

Q. Where were you on the 7th of May, last?

A. Bryden & Leitch's mill.

Q. At what town?

A. Aberdeen.

Q. Is that mill in the vicinity of the West bridge, across the Chehalis river?

A. Yes sir.

Q. What is the location of the mill with reference to the bridge?

A. How far down the river do you mean?

227 Q. Yes in what direction, it is west, the mill is west of the bridge?

COURT: I think it is all established on this map here.

Q. Did you see the Norwood on the 7th of May, the day of the accident of the West bridge?

A. Yes sir.

Q. From what position did you see the Norwood, that is where were you standing when you saw it?

A. I was standing on the dock of the Bryden & Leitch mill.

Q. You may go on and state to the court what you saw, heard and observed there?

A. The first thing that drew my attention as I went out on the dock at the end of the mill I seen the flag going very fast.

Q. Flag where?

A. On the bridge.

Q. The flag was going very fast?

A. Yes sir.

Q. Was anybody waving it?

A. No. When I went out side I saw the Norwood coming.

Q. Where was the Norwood?

A. About opposite the dock at the lower end.

Q. On which side of the river was she?

A. I should judge near the center of the river.

Q. Did you hear the Norwood whistle for the bridge the second time?

A. I only hear- her once, they say it whistled twice.

Q. Where was the Norwood when she whistled that time?

A. That is when I first seen her out there off the west end of the Bryden & Leitch dock.

Q. Did you see the bridge start to open?

A. Yes sir.

Q. Which way did it open?

A. It swung up the river.

228 Q. How far was the Norwood from the bridge when the bridge started to open?

A. I should judge she was 800 feet when the bridge started.

Q. Where with reference to that wharf could you look across wise? of the stream, you could observe that could you?

A. She was about the center of the mill in the river opposite of the center of the wharf.

Q. About the center of the mill?

A. Yes I guess the wharf is pretty near the center of the mill, the bridge started to open, yes I should judge just about the center of the mill as it started to open.

Q. Did the bridge move right along as it opened?

A. Yes sir.

Q. Did you see the bridge when it was completely open?

A. Yes.

Q. How far or near was the boat from the bridge when the bridge was open?

A. 3 or 400 feet from the bridge I should judge.

Q. What maneuver was she going through before she bumped against the pier, state how she manuevered?

A. First I noticed I seen her stern carried around by the current towards the other shore.

Q. How did she maneuver?

A. She kept on going down stream and the stern got carried around by the current.

Q. Did you see her cast anchor?

A. Yes sir.

Q. She let go of the anchor?

A. Yes sir.

Q. What position was she in when she let go of the anchor?

229 A. Well her stern was a little more, it was not quite square across the stream it was a little more up stream but she was carried around quite a lot.

Q. How long after that before she struck the bridge?

A. It was just a very few seconds.

Q. Did she continue in her first course and not change her course to the south would the bridge have been opened out of her way before she reached it?

A. Yes the bridge was wide open before she got near it.

Cross-examination by Mr. CROSS:

Q. Your mill is about how far from the bridge?

A. On the south side of the river the center of the mill is 27 rails from that to the bridge, the rails are 300 feet long, I presume. It is the main line of the Northern Pacific Railway Company.

Q. That would make it how many feet from the mill to the bridge?

A. About 800 feet.

Q. You say that you first observed the first thing that you observed was somebody waving the flag?

A. Yes sir.

Q. Rapidly on the bridge?

A. Yes sir.

Q. And you looked to see what it meant?

A. Yes sir.

Q. And what you observed was the Norwood coming?

A. Yes sir.

Q. At that time she was at or near a position on the north side of the river, opposite your mill?

A. At the west corner of the mill down the river corner, that would be north of the Wishkah river.

Q. North of the Wishkah river?

230 A. Yes sir.

Q. Did you hear her *her* whistle there?

A. Yes sir I heard her whistle there.

Q. Do you know whether or not she whistled any more, or had whistled prior to this?

A. I don't know as to that, that is the only whistle I heard.

Q. Now at the time they were waving the flag the bridge had not begun to open yet had it?

A. When I first noticed the bridge the bridge was closed and was waving a flag very rapidly.

Q. Waving very rapidly and the bridge was closed?

A. Yes sir.

Q. Then you say that you observed the Norwood again in the next observation that you made, she had continued toward the bridge to a point about opposite the center of your mill?

A. Yes sir.

Q. And then did you look towards the bridge?

A. Yes sir.

Q. And then where was this flag then did you see any flag?

A. Yes sir.

Q. Where was it?

A. They were waving the flag, they started to open the bridge then.

Q. They still were waving the flag?

A. Yes it started to open the bridge about the time the steamer was opposite the dock.

Q. So at the time they began to open the bridge they were still waving the flag?

A. Yes sir.

Q. Both at the same time?

A. Practically at the same time as near as I could tell.

231 Q. How far had the Norwood continued towards the bridge before she had changed her course?

A. The first I noticed her course change her course was just about east end of the dock, when I saw the current taking her around astern.

Q. Did you notice whether she was backing or trying to back at that time?

A. I could not tell as to that.

Q. Then the vessel changed her course from that point?

A. I could not tell whether it changed its course or not, the current changed its course some, so she went through the bridge stern first.

Q. Didn't she go toward the bridge in the meantime?

A. Yes going towards the bridge all the time.

Q. Was she making towards the south end?

A. Yes sir the bow was towards the south side.

Q. How far from the bridge was she?

A. She must have been, when she was broadside, I could not tell as to that, when she stopped she backed.

Q. You saw her cast anchor?

A. Yes sir.

Q. At the time she cast anchor she was about broadside you think a little up the stream, her stern was a little clear to the bridge than the bow?

A. Yes sir.

Q. How far was she from the south shore when she cast anchor?

A. I don't know she, her bow I should judge was pretty near even with the approach, then she swung around with her stern first, so that the bow was this way when she cast anchor?

Q. So she was at or near the line of the south approach, a little in towards land?

232 A. Yes sir I think it was.

Q. And during this time the vessel continued to drift broadside towards the bridge?

A. Her stern kept going right around.

Q. Didn't the whole vessel go?

A. I presume so I could not say the stern went around.

Q. Could you tell whether or not she drug her anchor?

A. I could not state as to that.

Q. From where you stood could you tell about how far the stern of the vessel missed the western end of the west of the bridge?

A. Western draw you mean?

Q. I mean the western end of the draw span.

A. No I could not tell.

Q. Now when she cast anchor could you see from where you were, what position the bridge was in?

A. Yes sir.

Q. What position the bridge was in?

A. It was wide open. Open you mean?

Q. As to whether it was opened or closed?

A. The draw was wide open.

Q. You think it was wide open when she cast anchor?

A. Yes the draw was wide open.

Q. What was there if anything that directed your attention to the bridge after this waving of the flag?

A. I was watching it I was watching the steamer and the bridge both.

Q. Did you have any impression that it was going through sternwise?

A. I knew if the anchor would not hold that she would go through sternwise.

Q. That was the impression that you had that she would go through sternwise?

A. Yes sir.

Q. And wasn't it true that she did go through sternwise, didn't she?

A. Yes sir.

Q. Do you know what force, or with what power the bridge was opened?

A. No I don't.

Redirect examination by Mr. HOGAN:

Q. What sort of a day was that, what sort of weather?

A. It was just about our usual weather, clear, the sun was not shining.

Q. How was the tide?

A. It was not a very strong running just about as usual.

Q. Do you know what stage of the tide it was, and how the wind was?

A. I think what wind there was was up the river from the west.

Q. How strong was the wind?

A. There was not a strong wind.

Recross-examination by Mr. CROSS:

Q. What can you say to that expanse of water in line south of the line between the pier that was damaged by the boat and the Bryden & Leitch wharf lying in there south between the wharf and the bridge what sort of water is that?

A. I don't know at very low water there is not very much water, probably not over 4 or 5 feet at the pier at low water. Of course I never sounded that.

Q. You never sounded it?

A. No.

Q. You know that has filled in there very rapidly since these mills and booms have been constructed there, don't you Mr. Leitch?

234 A. Yes sir.

Q. Very rapidly?

A. Yes sir.

Q. And at low water the tide commencing from that pier there for a good portion of the distance from the shore out to that pier that was damaged, is very low?

A. I should judge about one-half way out from the pier, from the pile work to the pier, there is a gradual slant commencing there.

Q. The tide fills in there very gradually, no jump off or channel so that at low water there would be some 4 or 5 feet of water at the pier?

A. Probably all of that at the pier, I never measured it there at the pier as I understand it, it is fully that deep.

Q. As I understand you the bow of the Norwood as she cast anchor south of the pier, if she had not been in south of the pier, that she struck, she would not have struck it?

A. No sir.

Q. So that as a matter of course, as a matter of fact, of course the fact of her having gone quite so far was one reason why she struck the corner of the bridge?

A. Yes sir.

Q. She let her anchor go before she stopped?

A. Yes sir.

Q. To avoid this effect it would have been necessary to have stopped the vessel sooner than she was stopped?

A. Yes sir.

Q. And did you know or did you not know if she had stopped in the passage that the stern of her would have struck this center portion or center supporting pier or dolphin which supports the swinging part of the bridge, the swinging span?

235 A. No I think that if the anchor had been let go a little sooner she would not have hit the bridge pier.

Q. Do you know how long the vessel is?

A. I should judge 80 or 90 feet.

Q. That end of the draw span is about 135 feet is it not?

A. I don't know.

Q. So that if the vessel was longer than the span that idea would not apply would it?

A. If they had anchored further up she would have swung clear.

Q. That is if she had turned across the river sooner down at the mouth of the Wishkah is that what you mean?

A. Yes sir.

HARRY VANTASSEL being duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. Your name is Harry Vantassel is it?

A. Yes sir.

Q. Where do you live?

A. In Portland now.

Q. Where did you live on the 7th of May last?

A. Aberdeen, Washington.

Q. What were you doing on that day?

A. I was tallying for Bryden & Leitch.

Q. At that mill in South Aberdeen?

A. Yes sir.

Q. Did you see this accident with the Chehalis river bridge that day?

A. I did.

Q. Where were you?

A. I was out standing on the end of the wharf of Bryden & Leitch's mill.

236 Q. You will go on and tell that the way you saw it occur that day? What drew your attention to it and what took place?

A. Well what first drew my attention to it was the blowing of whistles, and I naturally there was a strong wind blowing and a flood tide and the bridge didn't seem to open fast enough and I just naturally stood up there on the end of the wharf and watched them and when the Norwood got opposite our wharf she blew for the bridge to open and the bridge was open at the time or opening at the time.

Q. It had started to open?

A. Yes sir.

Q. Which way did it open?

A. The Wilson's mill end there went up stream that is east.

Q. Did it move right along after it started?

A. Yes sir as far as I could see.

Q. How far was the Norwood down the stream when the bridge started to open?

A. About 800 feet I should judge.

Q. Did you notice the speed that the Norwood made at the time that you saw her moving?

A. I don't know as I understand the question.

Q. You noticed how fast the Norwood was moving?

A. She was moving right along.

Q. Did you notice the motion of the bridge too?

A. No not particularly.

Q. Well now did you see the bridge when the bridge was clear open?

A. Yes sir.

Q. How far was the bridge, how far was the Norwood from the bridge at that time?

A. I don't know now as I could give it definitely she was some distance from the bridge.

237 Q. How many feet?

A. At least 200 feet.

Q. Did you see the Norwood when she started to changed towards the south?

A. Yes sir.

Q. You noticed her?

A. Yes sir.

Q. How far open was the bridge then?

A. The bridge was open then, I should like to change that, the bridge was not open entirely when she changed.

Q. How far open was she?

A. It was a little over half open.

Q. Could she have gone there if she had kept right on?

Mr. Cross: We object to the witness stating whether she could or could not that is for the court to say he is not called as an expert, but to state the facts.

Court: Sustain the objection.

Q. Did you see the Norwood cast anchor.

A. Yes sir.

Q. What position was she in then?

A. Why she was going at an angle towards our mill towards the fire pit you might say, towards the inside, towards the fire room headed down stream.

Q. Headed down stream was she?

A. Yes a little bit headed.

Q. Could you tell how far she was from the bridge then?

A. When she cast anchor?

Q. Yes.

A. About half way between the mill and the bridge.

Q. How long was that before she struck the pier.

A. She fetched up on the anchor then and swung around.

Q. Did she fetch up on the anchor then?

A. Yes sir.

238 A. Yes sir.

Q. The anchor cord, on the anchor cord was it?

A. Yes sir.

Q. Did she steam backwards?

A. I could not say.

Cross-examination by Mr. Cross:

Q. Now did you say or did you see any flag Mr. Vantassel?

A. I never saw any flag waving but I saw a flag there.

Q. Did you see any one with the flag?

A. I never noticed anybody with a flag no sir.

Q. Where was the flag did you say, that you saw?

A. On the south end of the bridge that is the draw.

Q. Between the house and the south end of the draw span?

A. Yes sir.

Q. It was stationary was it?

A. Why it was when I saw it yes.

Q. You were standing at an angle with the bridge at about how many degrees?

A. About 45 degrees possibly not quite that much.

Q. Distance of about how many feet?

A. About 600 feet.

Q. And the Norwood at the time you first observed her was nearly opposite you on the other side of the river?

A. Yes sir.

Q. Some 1500 feet?

A. Well over half way across the river, I don't know how far it is.

Q. Was she on the north side of the channel?

A. Yes I should judge so.

Q. You say you heard her whistling and that is what attracted your attention?

239 A. Yes sir.

Q. Were those whistles made in a positive way as if in earnest about it?

A. Yes sir.

Q. As what would be regarded as a hurry-up whistle?

A. Yes sir.

Q. You have been on the river and acquainted with steam boating and understand the effect and purpose of the various whistles?

A. I have.

Q. And was it a fact that these whistles meant for somebody to hurry up?

A. Yes sir.

Q. The whistles were what attracted your attention?

A. Yes sir.

Q. At the time that this whistle blew, you saw the bridge was standing closed?

Q. I said if I remember right, that it just started to open.

Q. You are sure at that time it started?

A. Yes sir.

Q. Now you say the steamer continued for some distance on her course after these whistles?

A. Yes sir.

Q. Until she got to about what point?

A. About 200 feet. I should judge from the center pier.

Q. That is about 200 feet from the rest?

A. Yes sir.

Q. Of the draw? Of the draw span?

A. Yes sir.

Q. There she changed her course?

A. Yes sir.

Q. And swung across the channel?

A. Yes sir.

240 Q. And cast her anchor after crossing the channel and about what position was the vessel in when she cast her anchor?

A. Why she was about on a line between the center of the draw and our fire room.

Q. It would be in the neighborhood of how many degrees with the bridge itself?

A. About 45 degrees.

Q. Was the stern and the whole vessel drifting with the tide?

A. Yes sir.

Q. I believe you stated that it was a strong tide and strong wind?

A. Yes sir.

Q. Both setting in the direction of the bridge?

A. Yes sir.

Q. Could you tell whether, about how far she had drifted while making across the channel? how far had the vessel drifted?

A. Now I could not Mr. Cross.

Q. So that her stern when you observed her had drifted past this resting, was it on the rest?

A. Well I could not say I think it was past the rest though.

Q. Were you noticing her closely when she cast anchor?

A. Yes sir.

Q. Did you notice her, whether she drug her anchor?

A. No I didn't notice that.

Q. Was the stern of the vessel lying up close to this resting pier on the west of the bridge when you first saw her swinging in?

A. Yes when she was first swinging in there.

Q. She swung up close to the rest the stern of her?

A. Yes sir.

Q. Do you know how long she is, the vessel?

241 A. No sir.

Q. Did the stern of the vessel near the bridge the swinging span as she went through stern wise, going in the same direction?

A. I don't know, I don't hardly understand what you mean.

Q. Referring to plaintiff's exhibit "4", you say the vessel came across here, this is down the river, the vessel came up here opposite your mill which is design-ed here by the "D", do you recognize the situation here this is the bridge, and this is the rest, and this is Bryden & Leitch's mill and this is the Wishkah river, have you your bearings?

A. Yes sir.

Q. You say that after she whistled the second time she moved up toward the bridge until she got within 200 feet of the rest of the draw span?

A. Yes sir.

Q. And there turned across the channel?

A. Yes sir.

Q. And the stern of the vessel missing the rest, the question is did this stern of the vessel clear the bridge as she opened?

A. No the bridge opened the other way.

Q. You think the bridge opened the other way?

A. This way up stream and this way down.

Q. You think then that the bridge was entirely open when she drifted?

A. She was in an open condition, yes.

Q. You say the bow of the vessel was towards you after she struck?

A. After she cast anchor.

Q. From the time she cast anchor?

A. No a little bit, a quarter.

Q. And the vessel was between you and the bridge?

242 A. Yes sir.

Q. And you could only see the superstructure of the bridge between the vessel?

A. Yes that is it.

Q. Did you understand what that red flag meant out there?

A. Yes sir.

Q. What did it mean?

A. Why I understood it that to be careful, to wait, there was no electricity.

Q. Where did you get that recollection?

A. In fact I have known it a long time, I don't know where I got it.

Q. When they would wave the flag, vibrate the flag rapidly what would that mean to you, the red flag?

A. That would mean danger I should judge.

Q. As a steam boat man would you take that as a danger signal, that there was danger ahead?

A. Yes sir.

Mr. McKINNEY being duly sworn on behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. What is your name?

A. McKinney is my name.

Q. Where were you on the 7th of May, last?

A. I was working in the mill of Bryden & Leitch, in South Aberdeen.

Q. What were you doing?

A. I was working on the dock, the log dock.

Q. Did you see the Norwood that day?

A. Yes sir.

Q. Did you see this accident of the Norwood with the bridge there?

243 A. Yes sir.

Q. Could you hear the Norwood whistle that day?

A. Yes sir.

Q. Whistle for the bridge?

A. I suppose so. She gave the signal which was four whistles.

Q. Where was she in the stream the first signal she gave, where was it that she gave the first signal?

A. At the dock.

Q. The second signal was when?

A. When she was out in the stream opposite the Bryden & Leitch dock there.

Q. Did you observe the bridge when it started to open?

A. Not at the time but I saw it afterwards.

Q. Was she pointed to it when you first saw the bridge swing?

A. Yes sir.

Q. How far had the bridge swung after the boat whistled the second time? The first time you looked up and saw the bridge swinging?

A. It was an eighth open.

Q. Where was the boat then?

A. Just off straight from the mill, just prior to that time she whistled the second time.

Q. How far from the bridge would that be?

A. About 800 feet.

Q. Did the bridge move along?

A. Yes not very rapidly but slow.

Q. Did you see the bridge when it was full open?

A. Yes sir.

Q. Where was the Norwood then?

A. The Norwood then was getting down pretty close to the span, that is struck.

244 Q. It had changed its course across the stream then?

A. Yes to the best of my knowledge it had it looked as though it had I could not see very well from where I was.

Q. Did you see them cast anchor?

A. Yes I saw the anchor start down.

Q. And it finally went down and struck bottom?

A. Yes sir.

Cross-examination by Mr. Cross:

Q. Between the time the Norwood whistled the first time and it whistled the second time had the bridge began to open? The bridge had not moved so that when she whistled the second time the bridge was still closed?

A. Yes sir.

Q. And she had moved about how far from her second whistle before you noticed the bridge had opened?

A. Do you mean how far the boat had moved before the bridge had started to open?

Q. Yes sir.

A. Not very far I could not say.

Q. In bearing to the whole distance what portion of the distance, one-half or one-third?

A. I could not say, judging distance on water, that way unless used to navigation might get a fellow.

Q. When she whistled the second time was there a whistle more than an usual whistle?

A. It seemed to be very sharp and shrill.

Q. As if the vessel was in earnest?

A. Yes as though it meant to get the bridge open.

Q. You say you were at the mill at this time?

A. Yes sir I was working on the deck.

245 Q. You were working inside the mill?

A. Yes sir on the deck.

Q. Was your attention turned to anything else after this?

A. Yes sir. I was working on the deck there and my attention was turned to my business then after that.

Q. And after you had looked after your business a short time or what ever length of time it was you then, your attention was then turned to the Norwood again?

A. Yes I looked out to see what was going on, and the Norwood had gone some distance towards the bridge.

Q. The Norwood then had gone some distance towards the bridge had it?

A. Yes sir. It had moved down towards the bridge.

Q. Do you think that it had gone 200 feet to the south resting pier at that time?

A. Yes something like that.

Q. This is the time that you saw the bridge starting to open?

A. Yes after the second whistle the bridge started to open.

Q. The Norwood was in what position when the bridge began to open that is in the stream?

A. Well it looked to *be* like it might be crossing to the south channel going across to the south of the channel.

Q. It had changed its course in there, in other words?

A. Somewhat.

Q. Was something like 200 feet from this south rest?

A. Something like that as best as I could tell.

Q. Could you tell how the bridge was opened, whether by electricity or by hand?

A. No I could not tell whether the current was on or opened by hand, I know it opened very slow, slower than usual, so I
246 knew there was something wrong.

Q. You are acquainted with the bridge and its operation?

A. Yes.

Q. You have been over it and across it a number of times?

A. Yes sir.

Q. Have you ever steamboated in this harbor?

A. No sir.

Q. You noticed that it was slower than usual?

A. Yes some slower.

Q. Then the Norwood had then come from the "G" street dock to within 200 feet of the south resting pier and had changed its course towards the south when the bridge began to open?

A. Yes sir.

Q. Now about what was the opening, or what portion of the space did you observe as being open when the Norwood cast her anchor?

A. Something like an eighth. As I stated awhile ago.

Q. Then when the Norwood cast anchor she was standing across the stream? But after she had cast anchor around with the ride.

A. No I don't remember what position she was standing when she cast the anchor.

Q. You were standing off to one side you could not see nor tell as well, could you see when the vessel drifted or did you observe the stern of the vessel as to whether it was close to that stationary span, rest or pier?

A. Well when she drifted around and drug her anchor around, the best I could see she struck about midships.

Q. What I have reference to is this Mr. Witness. You say that when the vessel cast her anchor she was about 200 feet from this stationary pier?

247 A. Yes something like that, the bridge that the swinging span rests on. Yes something like that.

Q. Here is the span and this is the rest there is no question about that. Here is where the collision occurred right here (indicating).

A. The best as I could observe would, where I saw it would be about here, that is she would be with the bow of the vessel a little south on a straight line of this stationary pier that was struck.

Q. On a straight line with this stationary span?

A. Yes sir something like that, as I observed her from where I was.

Q. Or she had crossed the river there about 200 feet west of this rest?

A. Something like that.

Q. And now the question that I asked you last was as to whether or not the stern of the vessel in passing in swinging into this opening on the south side, moved closely to that pier, close to it?

A. You mean the rest?

—

A. I hardly know.

Q. Do you know whether or not the vessel with the bridge in the stern of the vessel followed the motion of the bridge, the stern of the vessel was towards the bridge, was it not?

A. The stern of the vessel was down stream, the south end down stream and the vessel coming up stream.

Q. Did you see any flag?

A. I didn't see any flag.

Q. You didn't see any one waiving the flag?

A. No sir, I didn't see any flag at all until after the boat collided, I didn't notice.

248 A. J. WEST, as plaintiff in this case, being duly sworn gave testimony as follows:

Direct examination by Mr. HOGAN:

Q. Are you the plaintiff in this case Mr. West?

A. I am.

Q. Was this bridge your property?

A. Yes sir.

Q. It was on that day?

A. Yes sir it was on that day.

Q. How long had the bridge been in operation?

A. My recollection is it was open to the public on the 5th day of August.

Q. Preceding August, was it, 1905?

A. Yes, 1905.

Q. Was it a toll bridge?

A. Yes sir.

Q. How long was the bridge out of use? That is after this accident?

A. I think——

Mr. Cross: Objected to if our contention is correct it would be immaterial.

Court: Overruled.

A. From the 7th of May 1905 to the 20th day of October, 1906.

Court: From the 7th of May?

A. Yes sir.

Q. To the 20th day of October?

A. Yes sir.

Q. Did you know what the value of the use of the bridge per month would have been during that time?

Mr. Cross: We object to that for the same reason and for the further reason that it — not a proper measure of damages, if they are entitled to recover anything at all it would only be the interest or the value of the rents, or profits, it may be a paying concern or a losing concern.

Court: I will take the testimony and determine what the measure or proper measure of damages is.

Q. Do you know what the earning capacity per month during that time was?

A. I could only tell by the previous earnings of the bridge for that length of time.

Mr. Cross: We object your honor that would only be speculative.

Court: We will let it go in subject to the objection.

A. Yes sir it was, the month before it was something over \$800 taken in.

Court: As I understand you the 7th of May and the 20th of October of the same year?

A. Yes sir it was the time from which we didn't collect any tolls when the bridge was out of commission.

Q. What in your judgment was the earning capacity of the bridge, taking it to have operated?

Mr. Cross: We object your honor as we have no way of meeting that.

Court: I am not making any ruling I will take the testimony and based upon the legal questions as to whether or not it is a proper element of damages, when you come to argue this point. Proceed.

(Amendment by order of court, inserted after line 24 on this page.)

"A. I do know what the value of its use was during that time. *It was worth.* It was worth not less than \$800 per month, less the expense incident to its operation which would be less than \$150.00 per month. The use of the bridge was worth from \$600 to \$650 net per month."

Q. Were you on the bridge the day of the accident?

A. I was.

Q. When what time?

A. About eight o'clock the boy came down and reported
250 to me in the office that the electricity was off and I immediately called up the electric company's office and told them to send men to look after it. I then went direct to the bridge and stayed there until 11:30 then I went down to my house and got lunch, for the men. I heard the whistle blow for the bridge after I had gotten in the house and I picked up the paper and started to read and I heard her blow again and I got up and went out to see whether they were opening the bridge or not and before I had gotten out of the yard my son came down there to tell me that he thought that the boat had run into the bridge. I went directly there and when I got there they had swung the bridge around and it would not close.

Q. The boat had gone through?

A. Yes I told them to close it to the public. I didn't want to take any chances.

Mr. CROSS: We object to that it is hard to segregate what is proper and improper.

A. I was just telling you what I did and what orders were given.
COURT: Leave that out Mr. West.

A. That is all that I had done up to that time.

Q. What was done to the pier?

A. It was out of line and that was the reason that I gave the orders, I then went back directly to the telephone office and wired the bridge company to send a bridge crew at once.

Mr. CROSS: We object to that as it is immaterial.

COURT: It is proper it goes to show that they used proper precaution in its repair.

Mr. CROSS: There is no allegation your honor in the complaint in relation to these matters at all.

Mr. HOGAN: The allegation is that he would be necessarily deprived for a certain part of its use and during that time deprived of its earning capacity of \$800 per month.

COURT: Overruled.

251 A. I wired the bridge company to send the bridge crew down and went home and not hearing anything from them during the afternoon I concluded to start for Portland the next morning. About 5:30 I concluded to take a row boat to go over and make an examination so that I could tell them the condition of the bridge. I rowed across the river but before I got to the injured pier I heard a cracking noise and stopped rowing and while I was there the span went down.

Q. The whole span collapsed.

A. That pier swung around to the east and fell. The other end of the span remained on the south pier at that time, and during the night it fell into the river.

Q. State whether you took any measure to protect the material of the bridge?

A. In the morning I send a steam boat or my boom man up at the mill to go down there and get lines to make it fast so it could not get away and saved all that could possibly be saved and I started to Portland to see the bridge company.

Q. Will you explain to us the uses and purposes of these jacks on this bridge that is mentioned by some of the witnesses?

A. There is four jacks attached to a nut one at each corner of the swinging span, when the bridge is in position they turn those nuts down; there is a little needle in the bottom of these nuts, a jar that these needles set into to relieve the working up and down when the weight goes on there. And also to hold that span in position so as to keep these tracks in line when the street cars pass over it, so that it won't swing out of place and let the car run off the track and from letting the bridge vibrate when the weight comes on the other end.

Q. State whether or not the flag was out on the rail of the bridge?

252 A. It was out when I got there, I will say that Captain Stream—

Q. You need not mention any conversation. The flag was out, remained out?

A. Yes sir.

Q. You are acquainted with the water around in that vicinity?

A. Some.

Q. And the extent of the expanse of water towards the west and south of the pier that was damaged?

A. Yes sir.

Q. What would you say as to that, as to whether it is navigable water or not?

Mr. CROSS: We object your honor to the form of the question it is asking for the opinion of the witness as to whether it is navigable or not.

Q. Described the water as to its depth and so on?

A. My recollection is that it is about 22 feet of water at low tide at 22 to 24 at that pier where the boat struck and 26.0 feet over there at the other pier.

Q. Towards the south?

A. Yes sir it is in the neighborhood of 16 or 18 feet.

Q. And further south still how is it?

A. It shoals probably at low tide it is about 100 feet over there or such a matter I have not measured the distance but just over there and looked it over.

Q. State whether or not it continues that way down about Bryden & Leitch's mill?

A. I don't know.

Q. You own vessels and have owned them have you not?

A. Yes I am interested only.

Q. What sort of soil in the bed of that expanse of water to the south there?

253 A. Well it goes shoal there it is soft mud.

Q. Do you know whether or not danger would prevent a vessel like the Norwood from running on to the mud or not?

A. I have—

Mr. CROSS: We object, as he does not—it is incompetent, he has shown no qualification whatsoever.

Q. I will ask you a question if you won't answer that. Have you ever known vessels to do that Mr. West?

A. Yes sir I have known them in the Wishkah river, tug boats that run on the tide mud, when it was too narrow to turn around out in the stream, they ran into the mud and that held the bow until the stern swung around.

Mr. CROSS: Please the court I don't know what issue in the case that would prove or tend to prove, we don't know anything about tug boats or banks of the Wishwah river, or what the conditions were under which they did that and surely that would not be competent in this case. We move to strike that part of the witnesses' testimony.

Court: Yes it may be stricken.

Q. What kind of a day was the 7th of May?

A. It was a clear day with a northwest wind blowing.

Q. What was the stage of the tide between 11:30 and 12:00 o'clock?

A. It was going or getting pretty well towards full tide.

Q. Do you know what the height of the tide was that day?

A. I don't.

Cross-examination by Mr. CROSS:

Q. What would the waving of that flag mean, Mr. West on that bridge?

A. Why it was intended to mean for them to go slow to approach it slow.

254 Q. If it was just stationary what would it mean?

A. It meant to us and as I understood it meant to steam boat men to mean that they were not prepared to open it by electricity, that there was something wrong with the motor power and to keep off until they got it open.

Q. You had no code of signals?

A. No sir.

Q. So what these things meant to any person would be a matter of opinion?

A. I got my opinion in relation to it from my pilot?

Q. Who?

A. Captain Stream.

Q. He told you the code of signals?

A. No he said if there was anything wrong with the power of the bridge to put out a red flag and they would understand it.

Q. And that is in effect what this flag meant? That there was something wrong with the bridge?

A. Yes sir.

Q. Whether it was merely stuck in the hole stationary, or whether it was waving it meant the same thing according to your explanation?

A. Yes sir.

Q. You made no pretense of notifying any one else what it meant?

A. No sir I had it there and he said they would understand it.

Q. Did you ever give any code of signals or indicate any code to be used in connection with the operation of your bridge to the Bureau of Navigation or to any one else?

A. No sir.

Q. Then you don't claim that you ever notified anybody, navigators or any one else as to what this signal meant?

A. No sir.

255 Q. You never published, as I remember I asked you the question as to whether or not you published it?

A. I never published it.

Q. Did you help to open this same bridge that morning Mr. West?

A. I did.

Q. Do you know the vessels that you operated for?

A. I don't I was not paying any particular attention there was quite a number going back and forth.

Q. You did that by hand all morning?

A. Yes sir by hand well I was, while I was there.

Q. And when you left was it understood that they would continue to open it by hand instead of electric current to open it up?

A. The understanding, there was nothing said about it it was there for that purpose, the electricity was attached so that they could open it up by electricity and of course they would not open by hand if that were the case.

Q. These same parties that helped you to open it were still there, that is those who helped you to open it by hand?

A. Yes sir I will say that, if Mr. Gould got there he did——

Q. The same parties that were there then were there when the Norwood whistled?

A. I don't know as to that.

Q. If there was any change you didn't know it.

A. No sir.

Q. You say that you heard the first whistle of the Norwood?

A. Yes sir.

Q. You went home then?

A. I heard the whistle for the bridge, I never knew whether it was the Norwood or not.

Q. And later you heard another signal?

A. Yes sir.

256 Q. This second signal was there anything about it that attracted your attention?

A. Nothing more than, I thought they had not started to open the bridge.

Q. You took that to be the second whistle of the vessel as to the character of the whistle?

A. Yes sir.

Q. When you got there after your son notified you did you know then of the bridge?

A. Yes sir I did.

Q. What condition did you find it in as — the electric current?

A. Well as to the electric current I didn't have any way of telling anything about the current.

Q. How long would it take to open the bridge by electricity?

A. I never timed it at different times usually about a minute and a quarter or two minutes from the time it starts to the time it goes clear around. Not over a minute and a half and usually about a minute and a quarter.

Q. And by hand how long?

A. I should judge four or five minutes, I never time that. If I was there I either had to help, as I was always a little nervous about them getting it open, I never timed them, it takes a good deal longer by hand than electricity.

Q. That depends upon how many are at the lever and who they are?

A. Yes sir.

Q. When you left you believe you had left sufficient help to manipulate the bridge by hand if necessary?

A. Yes sir.

Q. So that as you believe there was no reason for delay in opening the bridge for the want of help?

257 A. There was no reason for any delay of opening the bridge.

Q. Well except if they had attached their electricity they might have made time?

A. It was merely a matter of choice with the bridge tenders whether they open it by hand or connected with the current.

Q. What I wish to know is whether or not as a matter of fact these men could have opened that bridge by hand with the force that they had, had they not delayed further than to just simply open the bridge?

A. Of course that could have been opened by hand.

Redirect examination by Mr. HOGAN:

Mr. HOGAN: I now offer in evidence the Articles of Incorporation of Sudden & Christensen.

Mr. CROSS: Sudden & Christensen as a corporation is another proposition, I don't know anything about Sudden & Christensen, as a corporation. So far as we are concerned, the defendants that we represent, we have nothing to say about that, it is immaterial as to us.

Mr. HOGAN: I would like to introduce tomorrow morning a certified copy of the franchise from the city of Aberdeen to Mr. West

for this bridge and let that go into the record at any time. It was on my desk this morning and I thought we had it in my valise.

Mr. CROSS: That is immaterial, the franchise from the city, you want to introduce the franchise from the city of Aberdeen?

Mr. HOGAN: You can see it is not here and I will supply it tomorrow.

Mr. CROSS: It may be furnished later, but we object to the offer on the ground that it is immaterial, the city would have no right to convey any franchise or interest it may have acquired for building a bridge on its own account.

Court: It may go in, it may be received.

Mr. HOGAN: Please the court I have one more witness, he
258 has not reached here yet, he was to be up here this afternoon on this afternoon's train, his testimony is in some extent cumulative, he was observing the boat in another point of view he is an ex-sea captain himself, I will rest the case and will introduce his testimony myself. That is Captain Dinse of the Heron Street Bridge.

Mr. CROSS: We don't know how to meet that, it may be the first witness.

Mr. HOGAN: I will call him the first thing in the morning.

Mr. CROSS: Please the court we make this suggestion, we make the suggestion that if we could take an adjournment, in the mean time we can be arranging our testimony for the defense, as our witnesses were not brought at all this morning, if we use a little time now we would not lose anything in the end.

Mr. HOGAN: I am willing to close the case now.

Court: How many witnesses have you?

Mr. CROSS: We have quite a number.

Court: As many as the plaintiff has?

Mr. CROSS: Yes about the same number.

Mr. BRINKER: We have had no chance to talk with them and we don't know just what scope their testimony would take.

Court: I will rest the case if you wish an adjournment you can have it and if you wish to call Mr. Dinse in the morning you can.

Ordinance of the City of Aberdeen introduced and marked Plaintiff's Exhibit "8".

Mr. BRINKER: Please the court, at this time we move for a non-suit and that the case be dismissed for the reason that the evidence as introduced by the plaintiff does not prove a cause which would justify a recovery under the allegations of their complaint. The alleged cause of action set up in the complaint, is negligence on the part of the defendants; while the evidence introduced by the
259 plaintiff shows, as a matter of fact, and the only negligence proven, is negligence on the part of the plaintiff, and in such a case plaintiff cannot recover.

Court: I will have to overrule it.

Mr. BRINKER: Save an exception.

Court: We will take it up at one o'clock.

(Amendment allowed by court, inserted after line No. 6.)

"The court refused to permit plaintiff to examine any further wit-

nesses as to the direction in which the bridge opened, on the ground that the same would be cumulative."

Defendant's Testimony.

JOHN GRAHAM being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. CROSS:

Q. Give your name and residence?

A. John Graham, South Aberdeen, I suppose is my residence.

Q. Do you remember the accident of the Norwood colliding with the bridge across the Chehalis river?

A. I know something about it.

Q. Do you remember the day?

A. No sir I don't. That I could not tell you.

Q. Where were you at the time?

A. At the time that the vessel hit the bridge?

Q. Yes.

A. I was on the center of the draw at the ticket office, near the center of the draw.

Q. Where was the Norwood when you first saw her that day?

A. At the "G" street dock.

Q. Where were you when she whistled to go through the bridge?

A. That would need an explanation. I was in front of Wilson's mill.

Q. Then you had gone from the "G" street dock over to Wilson's mill while the vessel was lying at the dock?

A. Yes sir.

260 Q. Which end of the bridge is Wilson's mill?

A. That would be the north end. If I am right, I think I am right, the north end.

Q. Did you observe the vessel when she whistled for the bridge the first time?

A. I observed that she whistled but I could not say at that time what she was doing.

Q. Was the Norwood in sight in your sight when she whistled the first time, could you see her?

A. No sir I could not.

Q. Did she whistle after that?

A. Yes sir.

Q. About where was she when she whistled the second time?

A. Opposite the Bryden & Leitch mill. I could not say how far that would be. From the draw I should say about 500 feet from the bridge.

Q. Did you see her when she whistled the second time?

A. Yes sir I was in sight of her then.

Q. About where were you when she whistled the second time?

A. I was right on the end at the time she whistled the second time, on the end of the draw.

Q. Which way were you going?

A. I was going to South Aberdeen going south, from north to south.

Q. Did you continue right straight along?

A. No sir I stopped right there.

Q. Where?

A. Where they sell tickets at the ticket office.

Q. State what rate you were going whether in a walk or otherwise?

A. Well in the first place when I saw the vessel, I didn't look, but after she whistled the second time I made up my mind that
261 I could not get across, but I saw that the draw was still shut and I went until I got to the center of the draw, or the ticket office.

Q. Is the ticket office the center of the draw?

A. Yes sir just about as near as I can judge.

Q. When you went onto the bridge you saw the Norwood?

A. Yes sir.

Q. What were they doing on the bridge the men in charge of the bridge if anything when you went there?

A. I didn't see them doing anything only trying to get connection with the current, there was a young fellow there and he had his foot on two wires and he called to his father to open the bridge he could not hold it and the bridge could not open.

Q. Where were you when this conversation was going on between the boy and the father?

A. I was walking on the draw, the boy was on the end of the draw and his father was in the office.

Q. Did you know these people that were talking?

A. No sir I don't know them yet.

Q. You don't know their names?

A. No sir I don't know them to-day.

Q. Do you know them by sight?

A. Yes sir.

Q. Were they the people that had been tending the bridge there?

A. Yes sir they had been tending from the time it was completed up to that time, I never saw any one else there.

Q. What was the next thing done after this?

A. The next thing was when he put the lever on for me to help him to open the bridge by hand.

Q. Have you learned since what his name was?

A. No sir, he is here today, he was here this morning.

262 Q. Is he the bridge tender?

A. Yes sir supposed to be.

Q. State what if anything you did after that request?

A. The only thing that I did was he put the lever and asked me to help him open the bridge by hand, he was just out of the house and if the other two fellows had got down there and helped us to open the bridge there would have been no trouble the boat would have went through.

Q. Where were the boys while you were working at the lever?

A. At the north end.

Q. You say you started the bridge?

A. Yes sir we certainly did.

Q. How far did you think it opened?

A. About five to ten feet or twenty feet. I could not say, I would not say exactly, but she opened some, I would say any way ten feet.

Q. Which way did the bridge start to open when you were at the lever?

A. I know which way she went, south.

Q. Which way did the north end go up steam or down stream, when you opened it with the lever?

A. The end towards Wilson's mill went up stream.

Q. Did you succeed in opening it with the lever?

A. No sir.

Q. What if anything caused you to stop?

A. Because the young fellow there, I suppose it is his son he said let it go and he said he would open it with electricity.

Q. Was that one of the boys at the end of the bridge talking to the man that was helping you?

A. Yes sir.

Q. What if anything did you do?

A. We let her go and she closed again.

Q. Closed again?

263 A. Yes sir.

Q. Did you observe this lever that you had been using?

A. Yes sir.

Q. I mean the lever that you had been trying to open the bridge with at this time?

A. Yes sir.

Q. What if anything, what motion did it take when you let go of it?

A. It took a motion, well it went so fast we could not catch it.

Q. When the bridge started to close the lever went so fast that you could not catch it at all?

A. Yes sir.

Q. Did it go around and around?

A. Certainly.

Q. Now what if anything was done after the bridge closed, what was the next thing done by the other of these parties or yourself in relation to the bridge after the bridge closed?

A. After the bridge closed?

Q. Yes after it came back? That is before the vessel went into it?

A. Yes sir. Well the first thing the old man that was working there said that the power was not strong enough to open the bridge, then his boy threw up the plank and set some keys and the old man in the power house said we have not power enough yet and when he did that the bridge opened but that was too late.

Q. Which way did the south end go when it finally opened?

A. The south end of the bridge opened up the last time, down stream the first time, and the last time up stream, I think. No it wasn't either it opened the first time with the north end towards

Wilson's mill and the last time it opened with the north end towards the boat.

264 Q. Could you tell from where you were standing which opening the vessel was intending to take or make?

A. I could not tell by the way she was going, when I saw her she was intending to take the south end, and did take the south end.

Q. Did you see the vessel about the time that you let go of the lever, where was she?

A. Yes sir.

Q. Where was she?

A. She got a little past Leitch's mill, I could not say how far from the draw she was getting pretty close to the bridge.

Q. Did you see her change her course?

A. Yes sir.

Q. About how far as nearly as you can state was he from the bridge when she changed her course?

A. I don't think I could state, me being on the middle of the bridge she was quite a ways from us.

Q. Did you observe the vessel after she changed her course?

A. Yes I observed here when she stopped and changed her course.

Q. Do you know whether she cast anchor or not?

A. Yes sir.

Q. You saw her cast anchor?

A. Yes sir.

Q. What position did the vessel take then relative to the bridge?

A. Why she cast her anchor and tried to hold but the current was too strong and got her and swung her.

Q. In swinging her what position did she take relative to the bridge?

A. I don't understand what, exactly, what you mean. I have to understand it before I can answer it.

265 Q. I mean what position did she take did she go bow towards or forward, or sternwise or do you know. Did she swing in the current did the current swing it?

A. Each part of the vessel got through, first the stern. Almost a quarter way, it must be the stern yes the stern of the boat or near the stern hit the bridge.

Q. Which end went up stream when she went through the bridge?

A. The stern.

Q. Did you notice the bridge as she — through were you watching her as she went through the bridge?

A. Yes sir.

Q. Was the bridge open or opening as she went through?

A. Yes the bridge was open when she went through.

Q. Do you remember whether the bridge was completely open when the vessel started through or whether the stern of the vessel followed the bridge as it opened to you remember that?

Mr. HOGAN: Object to the leading form of the question.

Q. Were you paying attention to that situation or anything like it?

A. The vessel you mean, just explain that question once more.

Q. Could you state from your observations whether or not the bridge or the stern of the vessel as it swung in followed the bridge in the opening or not?

A. No.

Q. Were they excited on the bridge?

A. Yes they certainly were.

Q. This gentleman that you say was addressed as father and as having his head or neck tied up, was he the man that helped you at the lever?

A. Yes sir.

Q. Do you know whether or not that was Mr. Gould, the bridge tender?

266 A. I don't know his name at all that is one thing, I don't know I know he was there this morning as I came across the bridge.

Q. Do you know Mr. West's son?

A. No not personally.

Q. Could you give us an idea as to the looks of the men in charge of the bridge as being young or old?

A. He was a young man.

Q. Who was a young man?

A. Two young and one old man.

Q. One is said to be Mr. West's son? The other is the bridge tender's son. As to their names you don't know?

A. No sir I don't know.

Cross-examination by Mr. HOGAN:

Q. How long have you lived in Aberdeen Mr. Graham?

A. About seven years last June.

Q. What have you been doing during that time, what has been your business?

A. I think you ask a leading question. I do most anything.

Q. Are you a drinking man?

A. No practically no, sometimes I take a drink.

Q. You drink to excess do you not?

A. No sir.

Q. Were you drinking on that day?

A. No sir I didn't have a drink, I was on my good behavior, and had sworn off three months and stayed by it too.

Q. Stayed by it three months?

A. Yes sir.

Q. What were you doing down at the "G" street wharf that day?

A. I was longshoring at that time, I was going to work on that vessel and I worked on it too.

267 Q. Did you meet the people of the Norwood there, the captain?

A. Yes I met the captain he didn't have anything to do with me, the captain had nothing to do with me.

Q. You met the crew of the vessel down there didn't you?

A. No sir.

Q. Did you help unload the vessel at the "G" street wharf?

A. No sir.

Q. Did you say you were down there to work on her, what did you go to the "G" street wharf for?

A. I went down to see.

Q. I would like to know in a general way——

Mr. CROSS: I object to what his business is as being wholly immaterial.

Mr. HOGAN: He could state in some way to indicate whether it was or whether it was not.

Q. What time of day was it you left the vessel at the "G" street wharf?

A. It must have been between ten and eleven I would not say for sure.

Q. Where did you go to then?

A. I started to go home, I was going to walk across the bridge.

Q. Did you go right home?

A. Yes sir as soon as I could get there.

Q. Do you, did you get right up on the bridge from the "G" street wharf?

A. Yes sir.

Q. Right straight without stopping?

A. Yes sir.

Q. What time did you get to the bridge?

A. About eleven o'clock as near as I can remember I had my watch in my pocket but didn't look at it, eleven o'clock as
268 near as I can remember it.

Q. You were there about eleven o'clock?

A. Yes sir as near as I know.

Q. When you got to Wilson's mill you heard the Norwood whistle?

A. Yes sir.

Q. Then you hurried and thought you would get to the bridge?

A. No sir I didn't hurry.

Q. Didn't you hurry when you first heard her whistle?

A. No sir for if she had opened when he blew that second whistle I never would have gotten there in time.

Q. Then you didn't hear it. Then you started to help open the bridge?

A. Yes sir.

Q. Which way did you say the south of the bridge opened, when she started to open, when you started to open it?

A. She moved down stream the south end moved down stream and the north end swung up stream.

Q. You say you moved her ten feet?

A. I didn't say any such a thing, she might have moved five or more.

Q. How much now would you say she moved?

A. I would not say.

Q. Didn't you say the wind got it, the wind got it the way the bridge was directed?

- A. I didn't know anything about the electricity of the bridge.
- Q. Did you notice whether the wind hit the bridge or not? The wind was up the river and the wind got it and swung it back.
- A. I don't know I may have said it, something got it and she went back shut.
- Q. She went shut?
- A. Yes sir.
- Q. And did she stop when she went shut?
- 269 A. Yes sir.
- Q. She went so fast this lever just whizzed around?
- A. No not that fast.
- Q. She stopped right on line?
- A. Yes the bridge closed right back.
- Q. And where was the Norwood then?
- A. Pretty close to the bridge about that time.
- Q. How close?
- A. I don't know I could not swear to anything I don't know.
- Q. You don't know how close she was?
- A. I would not attempt to say.
- Q. The bridge moved again did it?
- A. Yes sir.
- Q. Which way did the north end of the bridge move then?
- A. She moved down stream.
- Q. Where was the Norwood then?
- A. The Norwood was getting pretty near the pier and they just cleared the draw, clear of it when she hit the pier as near as I can remember and I think that is about right too.
- Q. You stated in your direct examination that the Norwood was headed for the south opening when she started out? She was heading for the south opening when you first saw her?
- A. Yes sir.
- Q. Then you saw her change her course?
- A. No sir I didn't.
- Q. You didn't see her change her course?
- A. No sir.
- Q. Did you see the Norwood when she whistled the second time?
- A. Yes sir.
- Q. And she headed then for the south draw of the bridge?
- A. To the best of my knowledge.
- 270 Q. And you didn't see her change her course at all?
- A. She was keeping on a straight line to the best of my knowledge.
- Q. What were they doing on the Norwood when she rested at the "G" street dock?
- A. Taking off freight.
- Q. How much did they have off?
- A. I don't know.
- Q. Whom did you see around there?
- A. Nobody but the captain.
- Q. You didn't see anybody around there?
- A. I might have seen them but I didn't speak to any one else.

Q. Did you see any other sea captain there?

A. I don't remember of seeing any.

Q. How long a talk did you have with the captain?

A. Maybe five minutes, or ten or fifteen, not over fifteen minutes. That was as long as I was there.

Q. Who first saw you about being a witness in this case?

A. Captain Martin.

Q. They saw you about it?

A. I didn't know his name.

Q. Harman?

A. Yes I guess so.

Mr. CROSS: We object, we move to strike the question and the answer as being improper and the answer following.

Mr. HOGAN: The motion to strike *are* hardly proper in a trial of this kind in this way anything improper is taken, and the court will regard it in the proper light.

Mr. CROSS: I don't know how we are to have it appear in the record in just what light the court is to consider it.

Q. When did Harman first see you about being a witness how long ago?

271 Mr. CROSS: We object, it is all improper.

HOGAN: I think we have a right to lead up to the bias of the witness.

COURT: Objection is overruled.

Q. When did he first see you?

A. About fifteen minutes, I think, 14 or 15 somewhere about then.

Q. Who else did you see about the bridge there? Did you see anybody else on the bridge?

A. No one but the bridge tenders were there.

Q. Was there anybody on the bridge?

A. I don't know for sure.

Q. About there?

A. Some one came over on a bicycle.

Q. Who was he?

A. I don't know.

Q. Did you see anybody on the other approach?

A. No sir.

Q. You didn't see the street car?

A. No sir.

Q. You didn't see anybody on the approach?

A. No sir I didn't.

Q. How did you get off the bridge that day?

A. That is easily to understand, they closed that bridge as far as they could, she lacked four inches of closing, I cleared over.

Q. Where did you clear over at?

A. At the south end of the draw.

Q. Which pier was struck by the vessel?

A. Which pier?

Q. Yes sir. What point of the bridge was it?

- A. I could not say the vessel was between me and the pier.
- Q. There is two sides of the bridge which side of the south
272 draw did you clear on to, or crawl on to?
- A. I crawled off on the east side, they turned the bridge
clear around.
- Q. They turned the bridge clear around?
- A. Yes sir.
- Q. They closed it up the other way?
- A. As far as they could, they closed it the other way.
- Q. This is the draw of the bridge, this is the swinging span or
draw, this is the south pier and this is the north one (indicating).
- Q. When she closed and the vessel went through she was standing
they turned it this way and that is all.
- Q. Which place did you get off of the draw?
- A. On the south side.
- Q. You say you got off on the east side?
- A. The east side of the south end.
- Q. Is that the end that swung up stream?
- A. When the vessel went through?
- Q. Yes sir.
- A. No sir.
- Q. That was the other end of the bridge?
- A. Yes she turned clear around she had to do it.
- Q. Here is the south draw, the south draw moved in what direc-
tion?
- A. Up stream, south end of the draw up stream.
- Q. And then they came to close it when you climbed off?
- A. The south end turned clear around the other way.
- Q. To which side?
- A. To the east side. The south end went to the east side, they
turned the bridge clear around.
- Q. Would you recognize this, that is the south approach?
- A. Yes sir.
- 273 Q. Where did you climb off of the bridge when you got
off?
- A. Right here on that corner.
- Q. You climbed off on that corner?
- A. Yes sir.
- Q. The "G" street wharf is down stream?
- A. Yes sir.
- Q. It is down stream?
- A. Yes.
- Q. You came off on this corner?
- A. Yes sir. As I told you the bridge turned clear around.

Redirect examination by Mr. Cross:

Q. Did you say anything to the bridge tender at the time when
you went onto the bridge about or to the effect that you wanted to
speak to the captain of the vessel, say it to the bridge tender?

A. No sir. I had nothing to do with the captain of the vessel
when I was on the bridge.

ROY GIBBONS being duly sworn on behalf of the defendants testified as follows:

Direct examination by Mr. CROSS:

Q. Give your name and residence Mr. Witness?

A. R. L. Gibbons, Aberdeen, Golden West Hotel, 208½ E. Heron St.

Q. Did you see the circumstances of the Norwood colliding with the bridge across the Chehalis river last May.

A. Yes sir.

Q. Were you on this bridge on that day?

A. Yes sir I was.

Q. Did you see the Norwood on that day?

A. I did.

Q. Where was she when you first saw her?

A. She was laying at the dock.

Q. Which dock?

274 A. "B" street or "G" street dock I don't know just exactly, I don't just exactly remember which, it was one of these docks.

Q. Did you hear her whistle for the bridge on that day?

A. Yes sir I did.

Q. Where were you at the time?

A. At the time she first whistled?

Q. Yes sir.

A. I was on the south approach of the bridge.

Q. How far from the shore on the south side?

A. Over half way up to the swinging span.

Q. Over half way up to the swinging span or draw?

A. Yes sir.

Q. Was there any one with you?

A. Yes sir.

Q. Who was he?

A. I don't know him he was a piano man he was interested in handling pianos.

Q. Were you employed at that time?

A. Yes sir.

Q. What doing?

A. I was employed by the delivery company; not for the piano company.

Q. What were you doing?

A. Driving a team.

Q. Did you have a team at this time?

A. Yes sir.

Q. One or two horses?

A. Two horses.

Q. What was the character of the vehicle?

A. It was an express wagon, covered express.

275 Q. Were you loaded or otherwise?

A. We had a piano yes sir.

Q. Piano?

A. Yes sir.

Q. Did you observe the vessel after she whistled the first time?

A. Yes sir.

Q. State what if anything was being done at the bridge when you got to the approach in the way of opening I mean the draw span?

A. When I came onto the draw, I mean the approach they were not doing anything, that I could remember of.

Q. Did you see any men on the bridge?

A. Yes sir a couple of men on the bridge.

Q. Do you remember where they were on the bridge?

A. I believe there was one, when I went down I paid my tollage for a round trip and of course I didn't have to stop at the toll house I went right on across and when I went off at the other end of the span a boy, I don't know his name, that worked on the bridge, he was there then at that end working at the jacks, I suppose, that is what he was doing.

Q. Did you see the vessel during this time, observe her?

A. Yes sir.

Q. What was she doing?

Q. She was moving in what direction in the water?

A. Coming towards the bridge.

Q. State whether or not you observed her whistle again?

A. She whistled two or more times, the first time I heard her whistle I don't believe she had cast off from the dock yet. And the second time that I heard her whistle she whistled about at the mouth of the Wishkah river and I am not certain but I think she whistled the third time. It was after I was across the span, I am not
276 fully certain about that.

Q. Do you remember her whistling twice?

A. Yes sir.

Q. Did you observe anybody else on the bridge at the time you were on it?

A. Yes there was a team at the other end across off the draw span as I came on it across right about the end of the draw span.

Q. Which direction was he going?

A. He was going south.

Q. Did you know the man?

A. No I didn't.

Q. Was it a team?

A. A single horse and delivery wagon.

Q. Do you know who he delivered for at the time?

A. It was Shelley Brothers' delivery wagon.

Q. Now when you got onto the north end of the bridge was — any one besides this young man you spoke of?

A. Yes sir the street car came up.

Q. What did you do if anything after coming off of the draw span off of the approach?

A. I went on and then stopped my team and the street car below past me and I went on again.

Q. Now did you observe the bridge as to whether it, when it opened in what direction it opened?

A. Yes the bridge started to open as soon as after I crossed.

Q. Which way did it start which way, the end next to you coming up or down the river?

A. Well up the river.

Q. Were you up the north end of the bridge?

A. Yes sir.

277 Q. Did you observe whether or not that bridge closed again?

A. I didn't see the bridge close but I saw the bridge again, I don't know what directed my attention and I saw the bridge was closing again.

Q. Do you know, or did you observe which way it finally opened?

A. It opened the north end swinging down stream, that is the best of my knowledge of it.

Q. Where were you when you observed the bridge last?

A. Well the last time that I saw the bridge was when I was standing there by Wilson's mill office.

Q. Were you looking back for the purpose, for any particular purpose?

A. Well no none particularly, we were remarking about the boat we could not make out the name of the boat at all until we got partly down the approach, it was the Norwood.

Q. Were you speaking of it one way and another, that was between you and the man with you?

A. Yes sir.

Q. Did you see with what force this bridge was started to be opened first?

A. No sir I didn't.

Q. Did you pass the man with the delivery wagon while on the span or just before you went on the span?

A. Well it was about the end of the span, I could not exactly say whether it was right on the span or just off the span, but it was in the neighborhood of ten feet, one way or another.

Q. What was there about it if anything that attracted your attention?

A. The fellow that was driving the wagon, I asked him—

Mr. HOGAN: We object to any statement.

278 Mr. CROSS: I don't know as it is objectionable it is simply just what attracted his attention.

Court: you may answer that.

A. I asked him to follow the street car track so that I would not have to cross it with the piano.

Q. At what rate of speed did you drive from the bridge whether fast or slow?

A. In a walk.

Cross-examination by Mr. HOGAN:

Q. Who were you working for at that time?

A. The city transfer company, Doyle & Kelley.

Q. When did you commence to work for them?

A. I don't remember just when I had been working for them probably two months previous to the accident.

Q. When did you quit there?

A. I quit there along the last of May.

Q. Last May?

A. Yes sir.

Q. How long had you been in Aberdeen?

A. A little over a year.

Mr. Cross: One more question please.

Q. How long—did you observe whether or not the Norwood changed her course in coming towards the bridge?

A. Yes she changed her course across wise with the river.

Q. About how far was she from the bridge when she changed her course?

A. Well I am not a judge of the distance on water I should judge in the neighborhood of 5 or 4 hundred yards.

Q. Do you know how far it is from the "G" street dock to the bridge?

A. I could not say as to that.

Q. About what portion of the distance from the mouth of the Wishkah river to the bridge was it?

A. About 2½ blocks, a block if about 300 feet.

279 Q. About two blocks and a half?

A. Maybe two blocks.

Q. That is after she blew the second time?

A. Yes sir.

Mr. HOGAN:

A. I have been in Aberdeen a little over a year.
the bridge across the Chehalis river last May?

Q. What are you doing at the present time?

A. Conductor on the street car.

Q. Where was the Norwood when she whistled the first time?

A. She was at the dock.

Q. Where were you then?

A. I was on the bridge.

Q. What part of it?

A. Something over half way up the southerly approach maybe further than half way, it was over half way.

Q. Where was the Norwood when she whistled the second time?

A. About the middle of the Wishkah river.

Q. Where were you?

A. On the bridge.

Q. What part?

A. I was just going off of the northerly end of the draw span.

Q. Down towards Wilson's mill?

A. Yes sir I had not started down yet.

Q. When she whistled the third time where you you?

A. That is a question as to whether she whistled the third time.

Q. Where were you when you thought it whistled the third time?

A. I looked back and was quite a good ways down the approach.

Q. Where was she?

- 280 A. Two blocks or $2\frac{1}{2}$ blocks from the bridge.
Q. Now you saw the street car there did you?
A. Yes I did.
Q. Did you see anybody in it?
A. Yes I saw the motorman.
Q. Anybody else?
A. I don't know I can't say as I did.
Q. Did you see any men standing on the approach?
A. No, none excepting the conductor and the bridge men that is all the men I saw.
Q. You didn't see anybody excepting the conductor and the bridge men at the approach that is all you saw?
A. Yes sir.
A. Yes sir.
Q. Where were you when you past the Shelley Delivery Wagon?
A. Southerly end of the draw span, right close to the span there on the span or off the span.
Q. Who was driving that team?
A. I don't know.
Q. You are sure that it was Shelley's team?
A. It had Shelley Bros. written on the side of the wagon.
Q. You had this conversation with him? You had this talk with him, you told him to go out on the rails because you had a piano?
A. Yes sir.
Q. You don't know the man that was with you when you were driving that team?
A. No sir.
Q. Do you know the team that you were driving at that time the kind of horses?
A. Yes sorrel and gray horses.
Q. What did they call that team there, is there any designation for the team?
281 A. Yes express team. Heavy express team the sorrel and the gray is a heavy express.
Q. You didn't stop at the toll house because you paid your toll when you went over?
A. Yes sir.
Q. What time did you go over?
A. Well I think I crossed the bridge in the neighborhood of about ten o'clock. Maybe a little before.
Q. What time was this?
A. While, well it was while I was coming back, it was about 11:30 or 11:45 or earlier than 11:30.
Q. Where had you been with that piano?
A. I had been to Cosmopolis and got it.
Q. What place?
A. In the southerly place in Cosmopolis, some side street.
Q. Does this piano man you speak of live in Aberdeen?
A. I don't know I am of the impression that he don't, I think he is a traveling man.

Q. You have never seen him since that do you remember?

A. Yes in the afternoon of the same day.

Q. How long have you been working for the electric company?

A. About a month.

CHARLES PATTERSON being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. Cross:

Q. Give your name, residence and business Mr. Patterson.

A. C. E. Patterson, Aberdeen, Washington.

Q. Where did you live on the 7th of May, last?

A. In Aberdeen.

Q. Do you remember what you were engaged in?

282 A. Yes sir.

Q. You may state what and the place.

A. I was working as tallyman for Wilson's Bros.

Q. You are acquainted with the bridge across the Wishkah, near Mr. Wilson's mill, Chehalis river I mean?

A. West's bridge?

Q. Yes sir.

A. Yes.

Q. Do you remember the circumstances of the steamer colliding with the bridge on that day?

A. I do.

Q. Do you remember what steamer it was?

A. Yes it was the steamer Norwood.

Q. Were you in the position, in a position where you could see the bridge about the time of the collision?

A. I was.

Q. State whether or not your attention was drawn to the bridge and the steamer at or about this time?

A. Yes we were expecting the steamer South Bay and when she whistled for the bridge I looked to see whether it was the South Bay or not, when she whistled the first time.

Q. Did you hear her whistle the first time?

A. I did.

Q. Did you hear her whistle again?

A. I did.

Q. State whether or not the bridge was open or closed when she whistled the second time?

A. The bridge was closed.

Q. Did you observe the men on the bridge that day?

A. Yes sir.

283 Q. Did you observe the motion of the bridge on that day, the opening and closing?

A. Yes sir.

Q. What opening was the steamer making for if you know?

A. It looked to me as though it was heading for the opening on the north side of the draw.

Q. How long after she whistled the second time before the bridge began to open?

A. It was two or three minutes any how, maybe longer, I could not say exactly what time.

Q. What direction if you know did the bridge take when it began to open?

A. It looked as though it opened twice, they opened by hand, started to the north end of the bridge started to open up stream and closed again and opened down stream.

Q. Could you see by what power?

A. By hand first and went finally open by elicticity.

Q. How far did the bridge open first when the north end went up stream?

A. I could not say not very far just a very short distance, perhaps eight or ten feet.

Q. Could you see the end of the bridge?

A. Yes sir.

Q. State whether or not the end of the bridge had passed eastward that would be from the approach?

Mr. HOGAN: Object to the leading form of the question, the width of the bridge or approach or how far relative to the width of the approach.

COURT: Overruled.

Q. Did the north end of the bridge move further or less than the width of the approach?

284 A. No I don't think it did.

Mr. HOGAN: He stated how far it moved.

COURT: He stated that it didn't.

Q. What direction did the bridge finally open?

A. I opened the north end swung down stream.

Q. Did you see the Norwood from the time she whistled the second time until she passed through the bridge?

A. Not until she passed through, I saw her after she struck.

Q. Did you observe whether or not she changed her course.

A. Yes sir.

Q. After she whistled the second time?

A. Yes sir.

Q. What direction did she take?

A. It swung across the stream heading south.

Q. How did she go through the bridge in what position?

A. When the boat swung across the stream it looked to me as though the tide carried him into the piers of the bridge and he was hanging up there and I went on about my work, he had not gotten from the bridge yet.

Q. You didn't continue to observe the vessel then?

A. No I didn't the boat finally got through.

Q. Through what opening of the bridge did the tide seem to carry the vessel?

A. Through the opening south of the draw span.

Q. Who, if any one was with you on the dock at the time?

A. John Wilson was standing there with me.

Q. Is that Mr. C. R. Wilson's son?

A. Yes sir.

Q. Have you been acquainted with the operation of this bridge for any length of time prior to the 7th of May?

285 A. I have noticed it there for several weeks, I have noticed it four or five times a day when it would swing.

Cross-examination by Mr. HOGAN:

Q. Did you see anybody on the north approach of the draw during that time?

A. On the north approach?

Q. Yes.

A. Yes sir there was a street car that had come up there just before they swung the bridge.

Q. Did you see anybody else come up there?

A. There might have been I don't remember now.

Q. Did you see any men standing there?

A. These bridge men were trying to fix the cable just before the car came up.

Q. How many?

A. Three of them.

Q. Three of them?

A. Two anyhow perhaps three they were electricians.

Q. Bridge men?

A. I don't think so.

Q. Did you see anybody else besides bridge tenders and people that were on the street car?

A. I didn't notice there was quite a bunch of them standing there some were watching them fix the cable wire.

Q. You didn't see anybody come up the approach?

A. The street car.

Q. The only one you saw?

A. I don't remember now.

Q. Did you see any flag?

A. No sir.

Q. Did you see anybody waving the flag?

286 A. No sir.

Q. How does the level of the Wilson Lumber Wharf compare with the elevation of the bridge?

A. The bridge is perhaps ten feet higher than the wharf.

Q. How high is the level of the span of the bridge above the wharf?

A. That is what I should judge ten feet, right there at the edge of the wharf, a man could walk under it and not touch it.

Q. Ten feet there and higher up at the draw is it?

A. Yes somewhat.

Q. How high is the draw of the bridge above Wilson's wharf?

A. It would not be more, very much over ten feet.

Q. Now whereabouts were you standing then?

A. About 150 yards from the bridge from the approach of the bridge to the left of it.

Q. That would be 450 feet up stream from the approach of the bridge?

A. Yes sir.

Q. How far from the river bank were you?

A. Right on the edge of the wharf.

Q. And from there you saw the Norwood lying at the "G" street wharf did you?

A. Yes sir.

Q. Did you see the Norwood tie up there?

A. No sir.

Q. You saw her pull out from the wharf?

A. Yes I jumped up on a lumber pile and looked out at her I thought it was the South Bay, we had been expecting her in.

Q. Was there any lumber pile along that wharf up to the road way of the bridge, the approach?

A. I could not say whether there was or not at that time.

287 Q. How high do they ordinarily pile the lumber on the edge of the wharf?

A. About 6 feet.

Q. How near does it come to the top of the deck of the draw of the bridge?

A. I comes within two or three feet of it.

Q. Comes two or three feet of it?

A. Yes sir.

Q. Were you about 450 feet of the Wilson Brothers' wharf?

A. I should judge about that distance yes sir.

Q. Was there any lumber piled there between you and the bridge on the wharf?

A. Yes sir lots of it.

Q. How high was it piled?

A. Five or six feet.

Q. How close are the piles under the approach of the bridge, how closely are they together?

A. I should judge they are about 20 feet apart.

Q. How many piles are on the wharf?

A. I don't know.

Q. You have no idea?

A. No sir.

Q. Where did you see it, over the lumber piles?

A. I jumped on top of one of the lumber piles and stood and looked out.

Q. Then you were not standing on the edge of the wharf at the edge of the river?

A. Yes sir.

Q. How did you get up on the lumber pile?

A. We got on top 6 or six feet high.

288 Q. You saw it over the deck of the approach of the bridge?

A. Yes sir.

Q. How long did you stay on there?

A. We stayed there until just before she whistled the second time.

Q. Then you got down?

A. Yes sir.

Q. What took place after that you don't know?

A. We got on there and stayed there on the pile of lumber waiting for her to get through the bridge. Her cabin was above the bridge all the time.

Q. Her cabin was above the bridge?

A. Yes sir.

Q. You could see it under the bridge and both above, what could you see besides her cabin above the approach?

A. Most — the smoke stack.

Q. How far was she from the bridge when she whistled the second time?

A. I presume that it must have been about 300 yards.

Q. Were you standing on the lumber pile then?

A. No I was down on the wharf at that time.

Q. What portion of the vessel did you see then?

A. Just that part that was not shut off from view by the bridge.

Q. That is the time you saw the bridge begin to open?

A. Yes shortly after that, she opened.

Q. She opened down stream the north end?

A. Yes sir.

Q. You are positive of that?

A. Yes sir.

Q. Did you see her swing back again?

A. Yes it swung back the same course they opened it.

289 Q. South end of the bridge the end that pointed down stream went to the south, when they closed it, in the opposite direction? It must have went all the way around? You took particular notice of that?

A. I notice when she closed the end down stream swung to the south.

Q. How far were you from the span of the bridge making these observation, how many feet would it be?

A. To the draw?

Q. Yes toward where the men were working at the toll house?

A. That is probably six or seven hundred feet.

Q. Six or seven hundred feet?

A. Yes sir. Perhaps more than that I don't know just exactly the distance.

Q. When was your attention called to the fact that the bridge swung right around when she closed the draw closed?

A. The first that I thought of it was when you asked me about it.

Q. You distinctly remember that was the fact?

A. Yes the bridge was knocked over about 3 or 4 feet out of line I noticed there was three or four feet that the draw span, if they had come the other way I don't believe they could have swung it any for it was thrown out of line.

Q. Your belief is that the north end of the bridge opened down stream?

Mr. CROSS: We object to the form of the question your honor he

is not to anticipate the possibility—he is supposed to testify to what he knows.

COURT: I see no objection to that question you may answer it.

A. It is my opinion that the bridge opened both ways, to the best of my knowledge and belief at this time.

290 Q. Who first spoke to you about you being a witness in the case for the defendants Mr. Patterson?

A. I don't know the gentleman's name he is from Tacoma.

Q. Mr. Harriman?

A. I don't know his name.

Q. When did he first interview you about it?

A. At least two months ago I think.

Q. How many times have you seen him about it before coming up here the other day?

Mr. Cross: We would like to get an objection in the record, that it is not proper cross-examination it would not effect the credibility of the witness unless they should indicate to the court that they expect to follow it up by showing that he was corrupted or something of that kind.

Mr. Hogan: I don't think this is objectionable, to a reasonable extent, we make these inquiries.

COURT: Overruled.

A. Twice.

W. A. MORRISON being duly sworn on behalf of defendants gave testimony as follows:

Direct examination by Mr. Cross:

A. State your name, age and place of residence?

Q. W. A. Morrison.

Q. What is your business Mr. Morrison?

A. Steamboat man.

Q. On what waters?

A. Gray's Harbor and its tributaries.

Q. How long have you been steamboating on the waters of Grays Harbor?

A. I have steamboated for the last ten years off and on.

Q. In what capacity?

291 A. For the last five years I have been pilot.

Q. You are acquainted with the bridge across the Chehalis river known as Mr. West's bridge?

A. Yes sir.

Q. Did you know it at the time of its construction?

A. Yes sir.

Q. Have you known it ever since?

A. Yes sir.

Q. Where were you on the 7th of May last, immediately prior to the accident?

A. I was on the ferry boat the South Aberdeen ferry boat.

Q. From what point to what point did that ferry boat run?

A. From Aberdeen to South Aberdeen.

Q. From what dock in Aberdeen did it leave?

A. "G" street dock.

Q. In coming from one point to the other would you pass under this bridge?

A. Yes sir.

Q. On the 7th of May last did you see the Norwood?

A. Yes sir.

Q. Did you pass through that bridge on the 7th of May?

A. Yes sir.

Q. What vessel was you piloting at that time?

A. The progress.

Q. Do you know how or with what power this bridge had been manipulated in the forenoon of that day?

A. I think most of the time it was hand power.

Q. Do you know about what time of day you know of the time when the Norwood left the "G" street dock?

A. Yes sir it was 11:00 o'clock or after.

Q. Did you hear her whistle for the bridge?

292 A. Yes sir.

Q. Where were — when she whistled for the bridge?

A. I was in South Aberdeen leaving the dock when she whistled the first time.

Q. Which side of the river was the Norwood on?

A. It was on the Aberdeen side, "G" street dock.

Q. What course did she take in leaving towards the bridge?

A. I paid no attention to that when I left the south side or South Aberdeen, she signalled me and started up the river head on.

Q. Did you observe where she went when she whistled the second time.

A. She just past- me.

Q. Where was she?

A. About half way between the "G" street dock and the bridge.

Q. Which side of the vessel did you pass on when you met her?

A. On the port side.

Q. When did you see the Norwood again?

A. I saw her again when she was swung on her anchor.

Q. Where were you then?

A. At "G" street dock making a landing.

Q. Were you watching the bridge and vessel during your course down the river?

A. No sir.

Q. What was the condition of the tide at that time?

A. It was flood tide.

Q. About what stage of the tide?

A. I could not say now close onto half tide.

Q. Speaking of the parties in charge of the bridge do you know who they were?

A. I think Mr. West's boy and the other boy that is all I seen that day. I don't know the other boy's name.

293 Q. Mr. Gould's son, the old gentleman, that has been tending the bridge, his son?

A. Yes his son.

Q. Did you observe any other vessels pass through that bridge that morning?

A. No nothing only small boats.

Q. Speaking of the piers supporting the approach on the south side of the swinging span, were they protected in any way?

Mr. HOGAN: Object to that as immaterial.

Court: Overruled.

A. No sir.

Q. Were there ever protected?

A. Yes sir.

Q. When and about how long if you know?

A. They were protected from the start but I don't know exactly how long for a month or such a matter.

Q. What do you mean from the start?

A. From the time the bridge was completed, finished.

Q. Do you know what became of those dolphins?

A. I think they were knocked out by the rafts of logs.

Q. Have you ever observed rafts passing through this bridge rafts of saw logs?

Mr. HOGAN: We object to that as immaterial.

Court: What is your purpose?

Mr. CROSS: It is for the purpose of showing that this pier was in a weakened condition.

Court: Proceed.

Mr. HOGAN: Exception.

Q. State whether or not you have ever observed rafts of saw logs passing through this bridge on the south side?

294 A. Yes sir I seen them pass through the bridge I have seen them stuck on the bridge.

Q. What were the sizes of these rafts?

A. I never stopped to measure them.

Q. I mean as to being large or small.

A. Some small rafts and some long rafts.

Q. Were they in tow or floating?

A. In tow.

Q. Were those rafts carried through there—now you say you have seen them hung up, explain to the court how and in what way they were hung up and where?

A. The round rafts some were put up too big to get through and other rafts got up against the pier and swung around, that is the long rafts.

Q. Did you ever see those rafts strike this particular pier, which support the south end of the span?

A. I seen one strike it.

Q. State whether it was large or small?

A. It was a large raft.

Q. Did you observe whether or not it had any effect on the bridge.

A. It struck the bridge pretty lively.

Q. State whether or not these colliding- of the rafts with the piers was frequent or otherwise?

Mr. HOGAN: Object to that, he already answered he said he only said he seen one.

COURT: I understood that as his statement. Is that the statement that you only saw one raft Mr. Witness?

A. The only one I saw strike the pier at the draw on the bridge.

Q. Now was this raft in tow?

A. Yes sir.

Q. Who was towing it, the raft?

295

A. The steamer Iola.

Q. Were these collisions on any particular pier or otherwise?

A. The pier that was struck was the one that was knocked down by the Norwood.

Q. Did you ever see any other rafts hand up on any other pier?

A. No not exactly on any other pier.

Q. Where were you when this raft collided with the pier?

A. On the South Aberdeen side making a landing.

Q. Was there anything in that collision that attracted your attention?

A. It attracted my attention when she jarred the bridge.

Q. Were those dolphins there then or had they disappeared?

A. They had disappeared the one on the lower side the one on the upper side was still there yet.

Q. Did you see about how many piling were in those dolphins that went out?

A. I could not say exactly the number, I think it was in the neighborhood of nine.

Q. Large or small?

A. Average size about 16 inches.

Q. What do you say took these out?

A. They were tore out by rafts.

Q. What do you mean when you say they were torn out by rafts?

A. Rafts knocked them out.

Q. Do you know how many piling were in those piers that were first put in the bridge, that was torn down?

A. It was about six I think.

Q. Were you there when they were completed?

A. I was on that run.

Q. In making your run were those piers on the route from one point to the other?

296

A. Yes sir.

Q. Do you know how long it takes to open that bridge with the motor?

A. It takes about two or three minutes.

Q. Do you know about how long it takes to open it by hand?

A. It takes them quite a while sometimes, when there is a breeze blowing.

Q. Did you observe how it was opened on this particular time, when the Norwood collided with the bridge?

A. I think it was opened by hand that day.

A. I know it to be opened just before the Norwood came up.

Q. Did you observe which way it opened that day?

A. No sir.

Q. Did you notice whether or not the Norwood changed her course in coming from the "G" street dock to the bridge?

A. The only time that I saw her change her course was when I saw her swinging on her anchor.

Q. Do you know about where she was when she cast anchor?

A. She was on the lower side of the bridge on the south side of the draw.

Q. Are you acquainted with the conditions there as to depths of water and so forth?

A. No sir not exactly, about 24 feet I think.

Q. That is at the pier?

A. Yes sir.

Q. At where she cast her anchor do you know how deep it is there?

A. I think it was about the same there.

Q. You were not there when she cast anchor?

A. I was at the "G" street dock.

Q. As to the tide flats south of the pier, this pier, that went down state whether or not those tide flats have filled up or washed out since the bridge was completed?

297 A. I don't think that they have washed out any, but have filled up.

Mr. HOGAN: We move to strike the answer he doesn't pretend to know I don't think he has shown any knowledge on the subject.

Q. Have you had occasion to observe whether or not it has filled or washed away since the bridge was in?

A. I never paid any attention to it. I know it was filled before the bridge was in.

Q. Do you know when the landing on the south side was extended?

A. Yes sir.

Q. Has that landing been extended since originally built out in the water?

A. Yes sir.

Q. About how far?

A. Something like 250 feet or 300 feet.

Q. What was the reason if you know of extending that landing out into the water?

A. We extended it out there so as to get water to land in it filled up so.

Q. What depth of water does the ferry boat draw?

A. Four feet.

Q. What is the depth of water where they are landing in now?

A. At low water it is about eight feet.

Q. How far are you above the draw span?

A. I could not tell you I think 100 feet or 150 feet.

Cross-examination by Mr. HOGAN:

Q. The ferry slope is 100 or 150 feet up stream from the bridge?

A. Yes sir.

298 Q. How many feet south of the bridge is the ferry slope?

A. That is towards South Aberdeen?

Q. From the draw span?

A. It is the length of that pier I don't know the length of it.

Q. The length of that approach, two inside bottoms subject to the draw span has fallen down, is it 450 or 600 feet.

A. No not that far.

Q. About how far?

A. About 200 feet.

Q. Now could you tell by looking at this map, plaintiff's exhibit "4" just look at it Mr. Morrison, the scale of that map is 600 feet to the inch, here is the ferry slope, you recognize that as the ferry slope, it is marked ferry dock, this is the Wishkah. This point is the pier that was injured, the scale on this map is 600 feet to the inch. How far would you take that to be in inches?

A. Three-quarters of an inch.

Q. Out to where it was struck how far would you call that from the ferry slope?

A. About 600 feet.

Q. Towards the south?

A. Yes sir.

Q. Towards the south bank of the river?

A. Yes sir.

Q. The other part has eight feet of water at low tide?

A. Yes sir.

Q. You work for Harrison Bros., Mr. Morrison?

A. Yes sir.

Q. They run the ferry from Aberdeen to South Aberdeen?

A. Yes sir.

Q. You have worked for them for quite a number of months — summer?

299 A. Yes for quite a few months.

Q. You say you past the Norwood on your port side, her port on your port?

A. I passed on her port and my port.

Q. And you past her about half way between the dock and the bridge?

A. Yes sir.

Q. You don't—you didn't see her at all again until you saw her at anchor? By one of the piers, up near the pier?

A. Yes swinging on the anchor.

Q. Did you see the flag on the bridge that day?

A. Yes sir.

Q. What time of day did you see it?

A. It was up there mostly all the forenoon.

Q. What did that indicate?

A. Well I don't know what it indicated to a stranger it means the bridge is out of order or danger to us.

Mr. CROSS: We have a witness here that we propose to use as an expert witness and that he may understand the questions and conditions as assumed by the defendants, we think it proper that he should be allowed to be present while we examine Captain Martin who is to be a chief witness on behalf of the defendants and then we can examine him in the light of the testimony given by Captain Martin. Assuming the conditions to be as he states what would in his judgment as an expert witness have been right and proper for the captain to have done or as to whether or not he did the proper thing.

Mr. HOGAN: We object as the defendants' suggested exclusion to the court and it ought to be enforced.

COURT: I think you should enforce this rule it would shorten up the examination considerably but you would have to put hypothetical questions to your expert.

300 Captain JOHN I. MARTIN one of the defendants being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. CROSS:

Q. You are one of the parties sued in this action?

A. Yes sir.

Q. What is your business?

A. As a master mariner, ship master.

Q. How long have you been a ship master?

A. About six years I guess something like that.

Q. On what waters have you plied?

A. Any ocean.

Q. On what waters have you acted as master?

A. Pacific coast.

Q. Are you a licensed officer?

A. Yes sir.

Q. From what office?

A. From the San Francisco office.

Q. How long have you been licensed from that office?

A. Something like ten years I guess.

Q. How long have you been master of the Norwood?

A. Ever since it was built.

Q. When was it built?

A. It was built a little over two years ago.

Q. Were you master of the vessel on the 7th of May last?

A. Yes sir.

Q. From what port did you come when you came to Grays Harbor?

A. From San Francisco.

Q. What state is that in?

185

A. California.

Q. From what points or between what points have you been operating?

301 A. As a master?

Q. Yes with this vessel?

A. When she was first built I went to Port Blakely for about eight months ever since then at Aberdeen Lumber Shingle Company at Aberdeen and Hoquiam?

Q. From what point?

A. From San Francisco to Grays Harbor and from Grays Harbor to San Francisco and San Pedro.

Q. What do you carry?

A. Passengers and freight.

Q. What is the tonnage of the vessel about?

A. About 492 net and over 700 gross.

Q. You mean tons?

A. Yes it is 700 tons gross and 492 tons net.

Q. What are her dimensions?

A. It is over 200 feet long, about 203 feet, with its keel, 48 foot beam and 15 foot hole.

Q. When did you leave San Francisco port for Grays Harbor?

A. About the 4th of May.

Q. About the 4th of May?

A. Yes sir or something like that.

Q. When did you arrive in Grays Harbor?

A. About ten o'clock on the 7th of May, a little after ten o'clock I don't remember exactly.

Q. You mean at "G" street dock in Aberdeen at that time?

A. Yes sir.

Q. What did you have on board at that time?

A. Freight and passengers.

Q. About when was it that you discharged your cargo, what time of day?

302 A. Well in the forenoon, you mean took the freight out?

Q. Yes.

A. About, a little after eleven o'clock or 11:20 or 11:25 I don't know when exactly.

Q. Were you under orders to load at any particular place?

A. Yes sir.

Q. Where and with what?

A. Aberdeen Lumber & Shingle Company mill, South Aberdeen, to load lumber.

Q. Where was that point located relative to the bridge across the river?

A. West of the bridge.

Q. Are you acquainted with the bridge in controversy in this action?

A. Yes sir.

Q. How long have you known that bridge?

A. Ever since the bridge got built.

Q. About how often have you had occasion to pass through that bridge?

A. About twice a month sometimes three times a month.

Q. Did you ever receive any code of signals or notice of signals or rules and regulations governing the operation of the bridge?

A. We got signals to blow the whistle. When we went there they were to open the bridge.

Q. What were the signals that you were to give for the opening of the bridge?

A. One long and three short whistles.

Q. Did you ever receive any code of signals or rules or regulations or notice as to what signals would be employed by the bridge owner or those operating the bridge?

303 A. From the owner or the people operating the bridge?

Q. Yes?

A. No sir.

Q. Were you in charge of the vessel when she left the "G" street dock?

A. Yes sir.

Q. State to the court what you did when you left the "G" street dock.

A. I let go of the head lines and blew the whistle for the bridge and backed the vessel a little so as to swing the bow out and started with slow bell from the dock towards the bridge and when I got near the mouth of the Wishkah river——

Q. Did you blow the whistle before you let go or after you let go?

A. After I let go of the bow line, the stern spring line was still fastened when I blew that signal or the first signal.

Q. What was that signal?

A. One long and three short whistles.

Q. Where were — on the vessel at this time?

A. On the bridge of the vessel.

Q. What was the signal for?

A. The signal was for the bridge to open.

Q. Was that the signal that you had employed or given theretofore for the opening of the bridge?

A. Yes sir.

Q. Had those in charge of the bridge always obeyed your signal theretofore?

A. Yes sir.

Q. Do you know whether or not that whistle is a regulation whistle for bridges or regulation——

304 Mr. HOGAN: There is no question about whistles. There is nothing conceded in fact——

Mr. CROSS: We offer this to show what was done, as they have not stated in what negligence consisted and we cannot assume what their contentions may be.

Mr. HOGAN: We withdraw the objection.

COURT: There is nothing in their examination that they were relying upon any one of the signals of the whistle.

Mr. CROSS: With the remark of the court, we waive the right to have it answered.

Q. About how long would it take you Captain to relieve the vessel and back her up and start forward?

A. Two or three minutes I guess.

Q. Now state what you did next.

A. I started ahead under slow bell and when I was opposite the Wishkah river I saw the bridge didn't open, so I gave them signals again and stopped the ship at the same time. The vessel went ahead a little with the tide and wind and then I say the bridge commence to open and then I started ahead—then I saw the bridge come back so I backed the vessel and ported the helm and then went ahead at full speed, at the time that the bridge went back.

Q. Did you observe any signal from the bridge?

A. My attention was called to a red flag waving on the bridge at that time.

Q. So that is the first time that you saw the red flag?

A. Yes sir.

Q. Where on the bridge was this red flag being waved?

A. To the south side of the house on the bridge.

Q. When relative to the time that the bridge began to open was this red flag waving?

A. After I blew the second signal.

305 Q. When relative to the time that the bridge closed back was the flag waving?

A. Before the bridge closed.

Q. When it stopped?

A. What do you mean, When it stopped my attention was called to the red flag.

Q. Do you know who called your attention to the flag?

A. The chief engineer that died and Captain Wierschuleit also about the same time.

Q. Captain Wierschuleit who was on deck with you at that time?

A. I only remember the chief engineer, he was on the saloon deck.

Q. Do you remember of seeing the man by the name of Schwartz?

A. No I don't remember him.

Q. Who was at the wheel at this time?

A. Two sailors.

Q. Do you remember their names?

— — —

Q. Do you remember any of their names?

A. I know one of their names.

Q. What is it?

A. Anderson.

Q. Where is the wheel relative to the bridge?

A. Just in front of the bridge.

Q. In front of you on the bridge?

A. Yes sir.

Q. Would you be higher than the pilot house when you are on the bridge?

A. Yes sir.

Q. How long was it after you whistled the second time that you observed the bridge beginning to open?

306 A. It was not very long I could not tell you the exact time, I didn't look at my watch.

Q. How far had you gone when the bridge closed back when you saw the flag?

A. I guess 300 feet or something like that.

Q. What do you take the signal with the flag to mean?

A. Danger or something wrong.

Q. Are you acquainted with the velocity with which this bridge opened and closed?

A. Yes sir.

Q. State how long in your judgment that bridge ordinarily opened and closed?

A. I guess it opened in a minute or so or a little over it used or ordinarily came around pretty quick.

Q. Do you know how this bridge was operated, with what power?

A. Electricity and by hand power too.

Q. How long was it from the time you blew the first whistle until the signal was given you by this flag?

A. I could not tell you the time.

Q. Well as nearly as you can in a general way.

A. There must have been something like six or seven minutes. I could not state exactly.

Q. After you blew the second time with what velocity did your vessel move?

A. Well she was stopped, she was just going so much as the tide and wind carried her, I was waiting for the bridge to open.

Q. Had the bridge under ordinary circumstances time to open?

A. When?

Q. After you whistled the second time?

A. Yes after I whistled the second time, without any trouble at all.

307 Q. What did you understand the motion of the bridge to mean when it started to open?

A. That it was going to open, if it had continued as it did from the time it started at the ordinary rate it would have been open in time for me to have gone through.

Q. What did you do when the bridge came back, after the flag was waved?

A. Backed full speed.

Q. What effect did that have on the course of the vessel?

A. It changed me to starboard.

Q. Is that the natural result of backing a steamer of this character?

A. Yes most of the time.

Q. I will ask you whether or not it is possible to back the vessel directly backward on a line?

A. You could not back the Norwood or any steamer of that size against the tide or wind.

Q. How was the tide and wind on this day?

A. The tide was going in and the wind was strong.

Q. As to the time between the blowing of the first whistle and the second whistle state whether or not the bridge under ordinary circumstances could have been opened?

A. Between the first and the second whistle?

Q. Yes.

A. Yes certainly.

Q. What was the position of the vessel relative to the bridge when you backed her?

A. It commenced to swing around the bow comes to the south end of the span to a point to the south end of the span.

308 Q. What was her motion as towards the bridge?

A. She was drifting some towards the bridge all the time.

Q. Which side of the bridge were you intending to pass through?

A. The north side.

Q. Do you know which way the bridge started to open when she first started?

A. Yes sir.

Q. You may state.

A. Up stream.

Q. Which end up stream?

A. The north end.

Q. Which way did it finally open?

A. The south end went up stream.

Q. How far were you from the dolphin at the end of the resting pier on the west side of the bridge when you changed your course, when you saw this signal?

A. About two or three hundred feet I could not say exactly.

Q. How far were you from this dolphin at the end of this rest, when you past the rest with the vessel?

A. I was told that it cleared about eight or ten feet from the dolphin.

Q. Did you have any one watching the vessel astern?

A. Yes sir.

Mr. HOGAN: We object.

Q. Who did you have at the stern watching the conditions there?

A. Captain Wierschuleit. I could not see the stern from the bridge so I asked him to go and see if she cleared the dolphin.

Q. What speed were you applying then?

A. Full speed ahead.

Q. When did you commence to apply full speed ahead?

A. After I backed her, the flag was waving to me.

309 Q. Now what was your purpose of driving her full speed ahead?

A. To get clear of the drawbridge.

Q. What part?

A. West part of the draw.

Q. You mean the draw rest?

A. Yes the draw rest.

Q. What would have been the result if you had not gone full speed ahead?

A. The tide would have carried me right against the draw rest. If I didn't go full speed ahead.

Q. Now how far did you go full speed ahead?

A. Just far enough to steer clear of that dolphin.

Q. Then what did you do?

A. I let go of my anchor.

Q. State the purpose of letting go of the anchor?

A. To swing the ship around and hold her, I could not do anything else. She drug on her anchor it would not hold.

Q. Couldn't you or could you continue that course completely, the circle and go down stream, could you do that?

A. No sir.

Q. What would interfere.

A. It would have knocked down the span and have killed everybody on board and would have wrecked the ship, I would have run into the tide mud.

Q. You mean that the bow of the vessel would have run onto the tide mud?

A. Yes sir.

Q. About how many feet does it take to turn that vessel in?

A. In a circle do you mean?

Q. As you were trying to turn her.

310 A. It takes about a thousand feet or eight hundred feet to go around in a circle.

Q. Is that in still water or in any kind of water?

A. No in still water.

Q. In what space would it take to turn it around the condition it was there?

A. Fourteen or fifteen hundred feet.

Q. What interference would it have with the running of the vessel as the tide was there?

A. The wind catches the bow she would not go around.

Q. She was empty?

A. Yes sir.

Q. State whether or not she is high or low at the bow?

A. She is very high at the bow.

Q. What position was she in when you cast anchor, or let go of your anchor?

A. She was heading for the south side of the river.

Q. Where was the stern of the vessel?

A. It just cleared the dolphin of the drawbridge or rest.

Q. When you say cleared the dolphin you mean the dolphin at the end of the West rest?

A. Yes sir.

Q. What was the effect of casting anchor, letting it go?

A. It swung it around.

Q. What was your purpose in doing that?

A. I could not do anything else to get clear of the bridge.

A. After you saw you had cleared the bridge then what would you have tried to do if anything had the bridge started to open in the meantime?

A. Yes about the same time.

311 Q. When or what direction did you give your vessel or the motion of the vessel then?

A. I backed her.

Q. At what speed or at what rate?

A. I backed her slow speed or something like that I guess.

Q. What was the effect of the vessel of backing her?

A. She swung ahead down the river clear of the south approach.

Q. You say the engineer that was aboard then has since died?

A. Yes sir.

Q. Well examine that and say whether or not you recognize the general outline there the condition of things, drawn on the theory that this is the south side?

A. That is about correct.

Q. Now referring to this sketch do you identify the relative position of the bridge and the draw rest or span so forth?

A. Yes sir.

Mr. CROSS: For the purpose of illustrating and without undertaking to say that it is correct, but for the purpose of illustrating or identifying the witnesses statements we offer this sketch in evidence.

Mr. HOGAN: I object to it as incompetent as it purports to be a sketch of the movements of the vessel which seems to be improper for the witness to state. It is not the way to arrive at the facts.

Mr. CROSS: If counsel refuses or objects to that, as he has not made one of his own, he can make one of his own and——

COURT: Examine him more thoroughly on that, in relation to it.

Mr. CROSS:

312 Q. Could you indicate from this sketch, assuming this to be the "C" street dock, regardless of any scale, about what portion of the distance had you gone when you whistled the second time?

A. About half way.

Q. Mark that point with the letter "X."

A. (He marks it with the letter "X.")

Q. Mr. CROSS: I would ask you to have this marked Defendant's Exhibit "T" for the purpose stated.

(Admitted and marked Defendant's Exhibit "I.")

Q. About where were you on your course when you saw the bridge come back and the flag wave?

A. Somewhere about here.

Q. Mark that "Y" will you please?

A. (He marks with the letter "Y.")

Q. Now can you indicate in a rough way or your own way what course you pursued, indicate with a dotted line.

A. I put the helm hard a port and she came down like this (Marks dotted line).

Q. Indicate a point as nearly as you can where you cast anchor by the letter "Z"?

A. (He indicates or marks it with the letter "Z.")

Q. So that the course the vessel took was as indicated by you by the dotted line from "Y" to "Z" is it?

A. Yes sir.

Q. What position was the vessel standing in when you cast anchor? What position was the vessel in? Make kind of an outline. Mark your diagram of the vessel with "W," indicate the position of the vessel when you reversed your engines stern wise?

A. That is about the position she took and I let go of my anchor the same time and she had headway a little, she drug her anchor, she might have gone a little further when she cleared this dolphin.

313 Q. The dolphin at the stern of the vessel?

A. Yes sir.

Q. Now indicate the position that the vessel was in when it went against the bridge connecting the bow of the vessel with the anchor as nearly as you can? Mark the diagram of the vessel at this point with the letter "U." What part of the vessel collided with the bridge.

A. The upper house a little past midships.

Q. What part of the bridge did the vessel collide with?

A. The cross beam on top of the piers.

Q. What was the effect of the collision to the vessel?

A. It just broke in a few flooring, $1\frac{1}{4}$ flooring it didn't break them it just jammed them in like.

Q. Could you indicate by that diagram about what position it left the siding in?

A. Yes sir.

Q. Just mark it there will you. How far are these stanchions apart?

A. About eighteen inches I should judge.

Q. Mark that diagram with "I" (i) which you diagram as broken siding, identify that with the letter (i). Q. How many of these boards were broken?

A. I never counted them, Mr. Lindstrom and Captain Wierschuleit said there were eight, I don't remember.

Q. How wide were the boards?

— $1\frac{1}{4}$ flooring planed boards $1\frac{1}{4}$ planned.

Q. How did the vessel strike the bridge?

A. The iron beam went into the rail.

Q. Top of the rail?

A. Yes sir.

Q. Did any part of the vessel strike this pier?

314 A. No sir.

Q. How did you relieve the vessel from the collision with the bridge?

A. By backing her.

Q. Explain that to the court how that would relieve her? Or how did it relieve her, calling the letter.

A. "W," the anchor was cast in here and when the chain got tightened up at about the same time it got in this position, I was

backing then slowly all the time and when the chain got tightened or straightened up—

Q. Was that your purpose, to prevent a collision?

A. Yes sir, that was the only change I had I could not do anything else.

Q. State whether or not that was what you were trying to do, was to back her through before she could drift against the bridge?

A. Yes sir.

Q. State to the court captain what it was that caused you to move towards the bridge or forward after you whistled the second time?

A. On account of the bridge commencing to open and coming back.

Q. I mean what caused you to go towards the bridge?

A. The bridge commenced to open up stream.

Q. And what caused you to change your course.

A. The waving of the red flag, and the bridge stopped.

Q. Are you still captain of the Norwood or master of the Norwood?

A. I am not at the present time. I was in San Francisco.

Q. You are still her master but not on board?

A. Yes sir.

Q. Did you see this flag at any time before your attention was called to it by the engineer and Mr. Wierschuleit?

A. No sir.

Q. Did you see it while it was sticking on the bridge?

315 A. No sir I only saw a man waving it, when the engineer and Mr. Wierschuleit called my attention to it, that is all.

Q. You may state captain whether you could then or since you have considered it devised any way or manner by which you could have avoided the collision?

A. I could not have done anything else excepting what I did.

Q. You mean under the circumstances under which you found yourself at that time?

A. Yes sir.

Cross-examination by Mr. HOGAN:

Q. Did you see or meet any other captain or seafaring man at the "G" street wharf before you left?

A. Yes sir.

Q. How many?

A. I could not tell some of them were on the wharf and some on board of the ship. There was Captain Sarrines and Captain Wierschuleit, and a gentleman by the name of Mr. Bryan, was on board.

Q. Any other captain that you remember?

A. I don't remember any more. I saw on the wharf Johnson of the Traveler.

Q. Captain Frederickson?

A. Yes he was on board.

Q. Is Diedrickson, is that the name of the other captain?

A. No not that I know of.

Q. How many captains were there at that time?

A. I could not say on the wharf, four or five, I could not tell how many, there was all I know, Sarries, Wierschuleit, Frederickson, were on board the ship, and Mr. Bryan.

Q. Did you notice any of them under the influence of liquor that day?

316 A. No sir.

Q. Who was the steward on the ship that day?

A. A little bit of a fellow, I forget his name.

Q. Is he with the ship yet?

A. No sir he left during the strike.

Q. Did you see him under the influence of liquor that day?

A. No sir I never saw him drunk as long as he was with us.

Q. How long did these captains come on board, stay on board?

A. I don't know I didn't take time to set it down.

Q. How did they happen to come there on business or what?

A. Yes sir on business.

Q. What was Wierschuleit's business there?

Mr. CROSS: We object to that it is immaterial and not proper cross-examination, not proper under any circumstances.

COURT: Sustain the objection.

Mr. HOGAN: Exception.

Q. How long did Wierschuleit remain on board?

A. I could not tell you he was not there very long. Oh Captain Wierschuleit, did you say, why he stayed.

Q. He stayed on board then?

A. Yes sir. He went up in the bridge of the vessel with me.

Q. He went upon the bridge of the vessel with you?

A. Yes sir.

Q. Did you invite him up?

A. I think I did.

Q. He called your attention to the flag did he?

A. The chief engineer called my attention to the flag first and Captain Wierschuleit called my attention about the same time.

Q. Was the chief engineer on duty?

A. No it was not his watch.

317 Q. Who was on duty?

A. First assistant.

Q. What was his name?

A. Mr. Dickey.

Q. You are not sure which called your attention to the flag whether Wierschuleit or the chief engineer?

A. I could not say, Wierschuleit was behind and the chief engineer was on the main deck, the chief says, some one is waving the flag do you see it Captain?

Q. How many feet were you from the bridge then?

A. Where?

Q. When the chief said that.

A. It must have been two or three hundred feet from the end of the draw from the end of the pier rest.

Q. You whistled the second time for the bridge and she had not left?

A. Yes she was drifting with the wind and the tide.

Q. The bridge had not swung when you whistled the second time?

A. No sir.

Q. How far away were you from the bridge?

A. About the mouth of the Wishkah river, I should judge.

Q. You noticed the bridge had not moved?

A. Yes sir.

Q. You went on then up to about 200 feet of the bridge kept right on?

A. Yes sir.

Q. And you saw this flag?

A. I saw the flag yes sir.

Q. Then you gave the bell for full speed back, and what else did you give, any other signal?

318 A. Well I went ahead again I went up the river.

Q. You went up the river again after that?

A. Yes sir.

Q. How far were you from the bridge when you started up the river again?

A. They told me that it clears the dolphin about eight or ten feet I could not see it myself.

Q. What signal did you give for full speed again? how long an interval?

A. Not very long.

Q. What motions did the vessel make?

A. She started to go ahead.

Q. How far did she move in the meantime, what were her motions in the meantime, between the full speed back and full speed ahead?

A. She didn't move very much.

Q. You didn't give any other signals then for the bridge, or your boat?

A. Yes sir I told them to let go of the anchor when the stern cleared this dolphin.

Q. Those were the orders that you gave?

A. Yes sir.

Q. Did you give the signal, blow it yourself?

A. I blew it myself.

Q. And further up the river you gave an order to full speed astern and then full speed ahead and the next order was to cast anchor? That is the maneuvering that you did on the boat, that would express the maneuvering that you did on that boat?

A. Yes sir.

Q. How long a time did that take?

319 A. I could not give you the time.

Q. Which anchor did you cast?

A. The starboard anchor.

Q. How much then did you put out?

A. About thirty fathoms until it commenced to hold in the mud it didn't right away.

Q. What was the vessel doing while you were running out that anchor?

A. She had a little headway and he backed to full speed to stop the headway.

Q. Were both those orders given together, the casting of the star-board anchor and full speed astern?

A. Yes about the same time.

Q. And you dropped about how many fathoms of chain?

A. About thirty fathoms.

Q. That would be about 180 feet of chain? Before the anchor began to hold?

A. Yes sir.

Q. In dropping any anchor like that captain, did you make any observation whether you got clear the bridge then dropped the anchor?

A. That is the only salvation I had.

Q. Did you judge of the situation?

A. Sir?

Q. You say you were not looking at the stern of the vessel?

A. I sent a man to see whether it cleared the dolphin I could not had done what I did if — didn't clear it.

Q. You had no idea whether it would clear it or not?

A. I could not tell no.

Q. You could not tell you just had to take chances on it?

A. Yes sir.

320 Q. It was simply this that you were in a tight situation, that you had no other alternative but to swing the vessel in and back and pull up on the anchor chain and if that reached to the bridge of course you would hit the bridge?

A. I goes in and I was backing full speed at the same time.

Q. When did they commence to heave in the anchor?

A. About the same time.

Q. Did Captain Wierschuleit say anything to you then?

A. Not that I know of, I did that by myself.

Q. Did he say anything to you that you remember?

A. I don't remember of him saying anything.

Q. Did he tell you not to drop the anchor?

A. No sir. Not that I know of.

Q. Did he say to you "For God's sake Captain don't drop the anchor," didn't he say that? But to go ahead?

A. No sir.

Q. Which way was your vessel headed when you dropped the anchor?

A. Headed for the south shore.

Q. Square?

A. Not exactly square.

Q. Under full head of speed?

A. No sir.

Q. How much water is to the south of you there?

A. South where?

Q. The way your vessel is headed, how much water could you see on the surface, what expanse of water?

A. About 130 feet more or less of water.

Q. That was virtually the same, the south bank was covered with water, and is about as far to the south as it is to the north?

A. I can't say, I could not tell you.

Q. Have you no recollection?

321 A. None whatsoever, no sir. It is a good deal longer distance to the north than to the south.

Q. You think it is?

A. I know it is.

Q. How much longer, how many feet? How many feet of water?

A. On the surface to the south of you up to the bank you mean?

Q. Yes sir.

A. It was covered with water the way the water was that day, I could not tell you it may have been four or five hundred feet I could not say. I didn't notice the bank of the water.

Q. How far was it down to the Bryden & Leitch wharf from where you cast your anchor? How far is it from the bridge to the Bryden & Leitch wharf?

A. When I cast my anchor it was eight feet of the draw rest, I could not say as to the distance to the Bryden & Leitch mill or wharf.

Q. You would have some recollection of the distance there would you not?

A. I don't know.

Q. What would you estimate the distance at?

A. That I could not tell, she cleared the dolphin about eight or ten feet of the draw rest where the anchor was cast.

Q. You would not pretend to say what that distance there was, you would not say whether near the wharf or far away from it?

A. I could not be close to the Bryden & Leitch wharf.

Q. What was to prevent you from making the circle to the Bryden & Leitch wharf?

A. I could not have made it I would have collided with the bridge.

Q. You can't tell us what that distance was?

A. Around by the Bryden & Leitch wharf?

Q. Yes.

322 A. No I could not tell.

Q. Then you say it was not possible for them to have made that circle?

A. No sir they could not they would have run into the bank.

Q. When you gave the first order for full speed astern how far did your vessel move astern?

A. She didn't move much. She slowed around to starboard.

Q. She slowed around to starboard?

A. Yes sir.

Q. How near was she then to the boom, on the north of the river?

A. I could not tell you I didn't look.

Q. You didn't look?

A. No sir.

Q. Why didn't you back out again there was no fear of that?

A. She would have come broadside and start to drift, I could not have gone ahead I would simply — drifted on the north span then.

Q. Were you two hundred feet of the Slade boom?

A. I didn't notice. Well a couple of hundred feet or more or less I could not say how near it was.

Q. It would not have done you any good to have backed the vessel? And give the order full steam ahead later?

A. If I had backed a little longer the tide and wind would have. I could not do anything except drift onto the north span.

Q. How is the Norwood to handle?

A. It is a hard vessel to handle.

Q. It is a sharp little vessel to handle?

A. Yes it does not go around as quickly as some vessels.

Q. Would you consider it good seamanship to approach so near a draw bridge with a vessel, that if anything happens on the bridge that he be compelled to open it?

Q. They commenced to open the bridge after that, I was at 323 a safe distance then, when I blew the second whistle.

Q. You were perfectly safe at that time?

A. Yes sir I could have done anything, then I blew the second signal.

Q. Now then that being true, if there had been no false motion of the bridge, if the bridge had not swung you would not *had* been justified in going near it?

Mr. Cross: We object to the question.

Court: Objection is sustained.

Redirect examination by Mr. Cross:

Q. I wish you would state in relation to the drifting against the north span you speak of when you backed your vessel after you saw the bridge close back you saw the signal on the bridge, your vessel turned across-wise with the stream as the result of that backing?

A. Yes sir.

Q. You say you would have drifted into the north span if you had continued to back further?

A. I would not have backed further, for I would have swung into the north span.

Q. You say you drifted from the time you turned until you got clear across the stream.

A. Yes sir.

Q. How far was that?

A. About two or three hundred feet I should judge.

Q. Where was this, the bow of the boat relative to this dolphin that was at the end of the west rest when you got her across the stream is that then on the front of you or on the side of you?

A. On the starboard side of the stern like.

Q. So that is the span of the bridge that you say you would have drifted against if you had waited?

324 A. No.

Q. You mean the dolphin on the north approach?

A. I would have gone against the north span.

Q. The north span of the revolving span?

A. The north span as I backed first, the north side of the bridge.

Q. The stationary span?

A. Yes sir.

Q. How far would you have to drift in order to have had your vessel behind the north of this rest?

A. Which rest?

Q. The west rest of the bridge.

A. Of the draw?

Q. Yes sir.

A. I don't understand you.

Q. Referring to defendant Exhibit "I" Captain you say that if you had continued to reverse your engines and go sternwise that you would have drifted against the north span?

A. Yes the north span.

Q. How much further would you have had to go to get your vessel behind this rest?

A. A couple of hundred feet about two hundred feet.

Q. In other words if you had continued to back your vessel after receiving this signal on the draw bridge you would have become completely penned in by this rest?

Mr. HOGAN: I object to this unless Mr. Cross takes the stand, as leading.

COURT: Sustain the objection.

Recross-examination by Mr. HOGAN:

Q. Do you know how many feet it is from the west end of that center rest to the north bank of the river along that boom there?

325 A. No sir.

Q. Do you know how many feet it is from the draw rest to the south bank of the river?

A. No sir I never measured that either.

Q. Can you give us any of these distances?

A. I could not say.

Q. How wide is the river there?

A. I could not say as to that either. The river there from the north bank to the south bank you mean?

Q. Yes that is the only way you can take it.

A. Seven or eight hundred feet, about between seven and eight hundred feet from the north shore to the south shore.

Q. How could any one turn the boat around in the Chehalis river at all?

— Yes I have turned it around.

Q. You are part owner of the Norwood Captain?

A. Yes sir.

JOHN I. MARTIN recalled.

Direct examination by Mr. Cross:

Q. Do you know where Captain Sarrines is?

A. He is in South Bend.

Q. Do you know where Dickey is?

A. He is on board the Norwood, he was when I left the ship in San Pedro.

Q. Do you know where Captain Frederickson is?

A. I think he is on his way to San Pedro.

Q. Do you know where Schartz is?

A. I can not tell you he told he was going to Mexico I believe he started the next day, after I did.

Q. Where was Sarrines day before yesterday? Did you see him or have you seen him for the past two days?

A. Yes I saw him yesterday morning.

Q. Where?

A. On this train coming here he was in Aberdeen the first day of the trial of this case, I think he came there 4 or 5 o'clock of that day on the afternoon train.

Q. Now to make that clear once more you say the Norwood would have to ordinarily have a thousand feet to turn around in?

A. Not in a circle say this is the river it would take about six hundred feet to turn if it were still water but tide water, the tide running it would take a thousand feet and then would have to back in that distance. Back around back and forth.

Q. You cannot turn in the Wishkah river?

A. No sir, I have turned in the Chehalis river since I have run in here.

Q. How near would you have to be to the bridge before danger would begin, in case the bridge didn't open? What was the danger line?

A. I don't know the danger line, we generally keep away at least six or seven hundred feet, when I gave the signal the bridge commenced to move and then swung back.

Q. How long after that would it be safe, how near would you have to be to that bridge?

A. I don't want to be closer with the Norwood than six or seven hundred feet, if that.

Q. You mean that you were six or seven hundred feet when you gave the second whistle?

A. Something like that.

Q. You had come six or seven hundred feet of the bridge and the bridge had not moved?

A. Yes sir.

327 Q. There seems to be some dispute Captain as to the direction the bridge took when it finally opened. State whether or not it would have been possible for you to have backed into the south wise of the bridge, south opening of the bridge if the swinging span had been say from an eighth to two-thirds open going with the south end down stream?

A. No sir because the bridge would have got the stern of the ship, that closed in there.

Q. Did the stern of the ship follow the bridge as it opened?

A. Yes the bridge was opening the same time I was swinging in.

Q. If there had been a dolphin or protection of some character at the end of this pier or the side of the pier next to the vessel what effect would that have had on the swinging of the vessel?

A. If there had been a dolphin or couple of piles it would not have hit the bridge at all, it would have taken the blow all right.

Q. In your examination yesterday I noticed that you first stated that after the giving of the second whistle you started toward, forward toward the bridge?

A. Yes sir the bridge commenced to open and I started ahead slow.

Q. I noticed also that you stated that after you saw the flag you started ahead?

A. After I saw the flag no sir, I started to back right away after I saw the flag.

Q. At what speed did you go ahead when you whistled the second time?

A. Slow bell, slow speed.

Q. Did you ever start full speed or were you applying full power of the vessel at any time from the time you left the "G" street dock until you had changed your course?

A. Until I changed my course?

328 Q. Yes?

A. No sir.

Q. At what point was it that you put it full speed ahead?

A. After I had backed her full speed back, I went full speed ahead.

Q. Was that when you put her helm to port?

A. Yes sir hard to port.

Q. In your cross examination you were asked whether it was possible to have run the bow of your boat onto the tide mud on the south side, explain to the court what if any result would have been caused.

A. On account of there being a strong wind I was so close to the draw span, my vessel was light and she would not have got around at all and the wind would have swung her into the span there, the south span, I could not have cleared the span at all.

Q. How high was the bow of the vessel?

A. When light I should say about 30 feet from the wharf. 8 foot bow.

Q. How much does she lie on the water astern?

A. 14 feet she is about 14 feet when she is light.

Q. Is that about the way she was on that day?

A. Yes sir.

Q. About eight foot on the bow and 14 feet astern?

A. Yes sir.

Q. Had you ever had any experience before this in the management of any vessel before?

A. No sir.

Q. When you cast anchor how far was your vessel from the bridge proper?

A. From the draw bridge?

Q. Yes I mean the line of the draw bridge?

A. The stern had just cleared about eight feet or ten feet, the dolphin on the draw rest. A little below the draw rest when
329 the anchor was cast.

Q. That would make it half the length of the draw span or such a matter?

A. Maybe a little more when I seen that she was going to clear, I gave orders to let go the anchor.

Q. The length of your vessel was greater than the distance of the draw span?

A. Yes sir.

Q. Were there any means that you know of whereby you could have prevented the vessel from drifting with the tide up stream?

A. No sir.

Q. State whether or not there is any danger in going ashore, if it were possible for you to have run it ashore or aground?

A. Certainly if you run a ship full speed ahead and go ashore you may strike a snag or rock or something might be there and cut through her bottom.

Q. Do you know anything about the conditions of the tide lands along there, that was covered up?

A. I do not. Some roots and trees and snags or something are all around the river.

Q. Did you have in mind the position or distance to the banks or tide mud when you cast anchor how far they were away from you?

A. No sir I could not tell exactly the low water mark.

Q. Did you have that thing in mind when you were going close to the banks?

A. Yes I knew if I beached the vessel, she would swing against the span with the wind and tide.

Q. If the vessel had run onto the tide mud could you have kept the stern from running onto the bridge?

330 A. No sir I could not.

Q. Could you have backed her off the mud at all?

A. No sir.

Q. How much of a raise of tide or water would it have taken to get your vessel off, if you had run her ashore, or aground?

A. It depends upon the tide.

Q. I say how much tide would it take to get her off ashore assuming that you run her ashore, how much of a raise of the tide would it take?

A. Sometimes if you run ashore it don't make any difference as to the tide, you may never get her off, if I had run her ashore I could not have gotten her off.

Q. What difference between the height that the tide was then and the height it finally raises at in time would not *would not* have been sufficient to have floated you off?

A. No sir.

Cross-examination by Mr. HOGAN:

Q. You spoke of rocks there Captain, were you afraid that you might strike a rock. You say you were afraid that you might strike a rock.

A. Yes a snag or something. I don't know what is on the shore I know the channel.

Q. Have you a pilot license?

A. Yes sir.

Q. Aren't you to know the rocks on the beach?

A. I know the channel but I am not to know the tide lands.

Q. You say there were rocks there?

A. I know there are snags and rocks all along the bar.

Q. Now as a matter of fact there was 400 feet, good and
331 strong, south of your carrying the vessel without touching any ground?

A. And what good would 400 feet have done me?

Q. To the south of you?

A. That would not have done me any good.

Q. The ship was turning when you cast anchor?

A. Yes sir.

Q. Heading how many degrees down stream, begun to the south and turned towards Bryden & Leitch's mill?

A. No sir it was headed to the south shore between the Bryden & Leitch mill and the bridge.

Q. Where were you half way?

A. No sir right close up to the bridge.

Q. She was only eight feet off the bridge, eight feet off the bridge?

A. Eight feet, yes off the draw rest.

Q. Eight feet off the draw rest on her stern?

A. Yes eight or ten feet.

Q. And her bow straight across the stream you say or was it down the stream?

A. It was just heading towards the Bryden & Leitch mill.

Q. Well the vessel was in that position there was no way to avoid hitting the bridge?

A. The only way I could avoid hitting the bridge was for them to have opened it.

Q. How far did you move back when you gave the signal full speed astern there and cast anchor, how far did the ship move back, how many feet?

A. I could not tell you. She didn't move very far she moved around and started towards the bridge drifting.

Q. Have you no idea how far she went back?

332 A. No sir not very far.

Q. Ship's length?

A. I don't think so.

Q. About half ship's length?

A. I don't think so, that much.

Q. 100 feet?

A. No I don't think that much.

Q. You put out 30 fathoms of anchor, thirty fathoms?

A. When I first backed full speed is when I got the signal from the bridge.

Q. When you put out that anchor and full speed ahead how far back then did she move?

A. She didn't move back at all.

Q. You say you gave the signal to cast the anchor and full speed ahead just together?

A. Yes about the same time.

Q. She didn't back at all?

A. No sir.

Q. She didn't tighten up on the anchor chain at all?

A. Not right away. At the moment she came to a stand still I told him to give out chain until she came to the span and I commenced back at the same time, to go through the south opening.

Q. I don't get that clear?

A. What is the reason?

Q. Say that there is no bridge there at all and you threw out your anchor and said full speed astern, on the chain of that anchor how far will the vessel move before—

A. No master will do that. He didn't let go the anchor and full speed ahead.

Q. You gave the order of full speed astern and cast the anchor?

33 A. Yes sir.

Q. Where would the vessel be when she brought up on the anchor chain after you cast the anchor?

A. I could not tell you that.

Q. How far this is the line of your business?

A. It is very hard to tell.

Q. Two hundred feet?

A. I could not tell you sir it would take 200 feet or 300 feet more or less than that, I should think, I could not tell.

Q. Don't you have any idea of casting that anchor?

A. No I could not tell exactly I could not tell at all.

Q. How far did you drag the anchor?

A. I could not tell you how far.

Q. Did she drag at all?

A. I have an idea she did yes sir.

Q. You have no idea how far?

A. No sir.

Q. If the anchor had not drag would you have cleared the bridge?

A. If the anchor would have held I would have went through.

Q. I could not tell you I know she drag some.

Q. Did Wierschuleit make any remark to you that day?

A. No sir not that I know of.

Q. Now of the bridge had opened up stream when you were then 200 feet of it it would have gotten out of the way of it you say you went 200 feet of the bridge, if the bridge had opened up stream that day and you had continued up the north channel the bridge would have gotten out of the way?

A. What is the question?

Q. You say when you were on the north side of the river when you gave the order full speed on the stern when you say there
334 was danger there how far were you from the bridge?

A. I guess two or three hundred feet from the draw rest.

Q. If at that time the bridge had started to open then with the north span up stream and you had gone ahead for the north opening the bridge would have gotten out of the way?

A. When I was headed up stream, but the bridge came back on me, and I saw the flag at the same time.

Q. You say the bridge opened in about a minute?

A. Yes about a minute.

Q. So that if the vessel is within then a few feet of the bridge, and following it up and the vessel under full speed, the bridge will keep out of the way?

A. It depends upon the tide.

Q. How long does it take to open the bridge by hand power?

A. I don't know I don't know as they ever opened it up for me by hand power.

Q. You are an experienced captain and pilot and seafaring man it would indicate to you that it would be slower by hand power than by electricity?

A. Yes sir.

Q. How much slower?

A. I could not tell. If they had a good man on the bridge I guess they can open it pretty quick, it depends upon the kind of men on the bridge.

Q. Then you gave the order to put her hard to port?

A. Yes sir.

Q. You didn't mention that in your cross examination yesterday?

A. You didn't ask me.

Q. I told you to give all the signals you gave you didn't mention putting the vessel hard at port?

335 A. I don't know I don't think you asked me that.

Q. You remember now that you did tell them to put it hard to port?

A. Yes sir, the helm hard to port.

Q. That is what put the vessel around?

A. Yes by putting the helm hard to port.

Q. The vessel didn't change then because you backed up?

A. It didn't change then because I backed, what do you mean, I don't understand the question.

Q. I say the vessel didn't change her course because of the fact that you backed up, but because of the other fact that you put the helm hard to port, do you understand that?

A. The helm was put hard to port, that brings the ship to starboard.

Q. You are positive that at the time you gave an order, that you gave an order for full speed astern?

A. When the bridge came back on her and they waved the flag all I could do then was to back her full speed. Yes sir.

Q. What if any signals did you give engineer when you blew the second whistle?

A. When I blew the second whistle?

Q. Yes.

A. The bridge commenced to open and I started the vessel ahead the boat was stopped at that time.

Q. On account of the little confusion Captain I would like you to go over those signals again. Was was your first signal to the engineer?

A. Slow speed astern.

Q. The object of that was to draw the vessel out into the channel?

A. Yes the stern swung out.

Q. Slow speed astern?

336 Q. *Slow speed astern?*

A. Yes sir.

Q. What was the next signal?

A. Slow speed ahead.

Q. That was when you were leaving the wharf?

A. Yes sir.

Q. You proceeded down on the slow speed ahead until how far?

A. Up to the Wishkah river about there.

Q. What signal did you give then?

A. I gave him the signal to stop.

Q. Then you whistled?

A. About the same time yes.

Q. What was your signal to the engineer when the bridge started to open?

A. It was slow speed ahead.

Q. How far did you move that way?

A. I would say a couple of hundred feet, three or four hundred feet I should say.

Q. Then what signal did you give the engineer?

A. To stop and full speed back.

Q. Stop and full speed back?

A. Yes sir.

Q. What next signal did you give?

A. Full speed ahead.

Q. That carried you across the river?

A. Yes sir.

Q. And your next signal was what?

A. Stop and full speed astern.

Q. Full speed astern?

A. Yes sir.

37 Q. That is all and that is the time the bridge was struck?

A. No sir, the engine was stopped and an order given to leave up her anchor, and I tried to go through the south opening.

Q. What signal did you give the engineer to go back through the opening?

A. Slow speed astern.

Q. He changed her full speed astern?

A. About half speed astern. When the vessel came to a stand

still and when she tightened up on the chain I commenced to back her through the south opening.

Mr. BRINKER: Last night after the court adjourned the captain said that he desired to correct one of the answers he made to one of Mr. Hogan's questions, and I said he might correct that answer if he wanted to.

Mr. CROSS: What do you think you said, what was it you said to Mr. Hogan's question.

A. I said the bridge came to a stand still, that is all I said.

Mr. BRINKER: I understood the captain to say last night that he answered one of Mr. Hogan's questions, that when he saw the bridge start to open he gave the signal for full speed ahead.

A. No I said the bridge came to a stand still.

Mr. BRINKER:

Q. If you answered it that way do you wish to correct it?

A. I didn't say that but if I did I want to correct it.

Mr. HOGAN:

Q. How much did she open?

A. I saw her open and come to a stand still and a man came out with a red flag.

Q. How many feet did it move?

A. I could not tell. I just could see the opening that is all I could not tell how much she opened, how many feet.

338 Q. So that because of seeing it open you knew that it moved?

A. Yes I knew it moved.

Q. Well could you notice the frame work of the bridge moving?

A. I saw the draw span.

Mr. CROSS: Captain states that there is a mistake about the Norwood being in the people whose depositions we have are not in yet. The first deposition that we have is the deposition of John R. Sarrines. These depositions of course they will have to be read some time your honor so we will read them as briefly as we can and avoid as much preliminary as we can as to his questions and his answers.

Deposition of John R. Sarrines read and submitted.

Captain B. B. WHITNEY, being duly sworn on behalf of defendants, testified as follows:

Direct examination by Mr. BRINKER:

Q. Captain Whitney please state your name to the court.

A. B. B. Whitney.

Q. Where do you live?

A. Seattle.

Q. What is your present occupation?

A. United States Inspector of Hulls for the Seattle District.

Q. Have you ever had any experience at sea?

A. I have.

Q. What, for what length of time?

A. I followed the sea about twenty years.

Q. Were you ever master mariner?

A. Yes sir.

Q. Were you ever master of a steam vessel a sea-going vessel?

A. Yes sir.

Q. For what length of time?

339 A. I don't know just what length of time, I suppose I was master of different steam vessels for about five or six years.

Q. You are acquainted with the steamer Norwood?

A. I have seen the Norwood, she is a modern steam schooner.

Q. She is a vessel of about 203 feet long, on the keel and over all about 208 or 210 feet and something over 700 gross tons burden. Her depth, of hold is about 15 feet, the beam is 38-6. Now this vessel landed at the "G" street dock in Aberdeen on the 7th day of May, and upon getting ready to leave the dock just as she cast off her lines or a little before, she whistled to the people attending the bridge across the Chehalis river for them to open the draw and then he started up the Chehalis river towards the north opening of the span of the bridge under slow bell at slow speed to about half, way, when he observed that the bridge had not began to open, the master gave a second signal to open the bridge or draw of the bridge, distant about seven or eight hundred feet and at that time the captain saw what he understood to be the bridge starting to open with the draw span swinging up stream, the north end of the draw span swinging up stream he proceeded at slow speed in the direction she was going, towards the north end of the draw span to about 200 feet of it when as it appeared to him the draw span closed again and the flag began to wave on the bridge, he took it to be a danger signal he then put his helm hard to port, he first stopped and gave the signal full speed astern and then put his helm hard to port and gave signal full speed ahead, there was a pier rest or rest of the draw span extending down the river about half the length of the draw or 135 feet and when he put his helm hard to port he was about 200 feet from that pier rest down stream, at that time there was a strong wind blowing up stream in the direction the boat was going and the tide was running in the same direction. The tide as the evidence discloses in the neighborhood of three-quarters full, he then, as he put his helm hard to port, started full speed ahead aiming to cross the river and turn in a semi-circle. Intending to head down stream. His fear was to clear the draw rest, when he discovered that he had cleared it he cleared it about eight or ten feet, he then dropped anchor from his starboard bow and gave the signal to full speed astern, the vessel swung around, and he then discovered that the draw span was open, he then aimed to back through the draw span up the river and in making that maneuver the vessel came into contact with the bridge. Now from your experience in the handling of steam vessels as a master mariner, will you state whether, in your opinion, the captain exercised good judgment, good seamanship and proper discretion in making the

maneuver which I described, assuming that the maneuvers were made as described? Assuming the facts exist as I have stated?

A. I could not tell you. In handling of a vessel, depends upon the number of different circumstances, the length, the depth, the power or size of the rudder and the force of the *force of the* elements that you have to compete with. If I had never handled that particular vessel as there are no two vessels that handle alike, unless just alike in size and power it would be impossible for any one to tell I think only the man who had handled the vessel or who was handling her at that time, a man sometimes misses his own calculation in tight places, you are liable to make a mistake. I would have to know the vessel to know whether I could make the turn or not, before I could answer the question.

Q. Then can you state whether his action as described under the circumstances was an exercise of good seamanship?

A. I could not tell whether the vessel could make the turn or not and head down stream, or whether it was going to carry
341 her through.

Q. With each of the conditions as described, then what limits or space could the vessel make the turn that she endeavored to make there?

A. I could not tell you what would be the limit that would depend upon the force of the wind and trim of the vessel, if the vessel was loaded or not.

Q. It says that the vessel was not loaded but was empty and the bow stood up from the surface of the water fully 30 feet and drawing forward eight feet and aft fifteen feet.

A. I have never handled the vessel and I could not state how far it would take to make the turn, a man cannot tell unless he has handled the vessel.

Q. I believe the evidence shows between the north shore and the south shore is about 800 feet and the vessel at the time she started to make the turn was near the draw span, that would be about the middle of the river, when she was making the turn towards down river, now how much space would she require so as to turn down river with the wind and tide going with the vessel in the same direction.

A. It would be impossible for me to tell you. I don't know the strength of the wind. Maybe the vessel has a small rudder or it may be that the vessel has a large rudder. Allowing that she is in the center of the river and about 400 feet to turn in, that under favorable conditions that would — pretty close quarters to turn in if the vessel handles well.

Q. Now suppose captain that when the master of the vessel had cleared the draw span, the draw rest, the down stream end of the draw rest, was opposite the opening in the south span of the river and dropped his anchor and endeavored to back through the south
342 span of the bridge up the river, state whether or not the circumstances the wind and tide being as indicated in the former question, that was the exercise of good judgment or seamanship, good seamanship to back through?

A. Yes sir.

Q. Now when the vessel would be on the anchor chain and backing up with *with* the current of the river, in that manner state whether or not she would be likely to sway in from side to side?

A. Very little if she was backing.

Q. Suppose that when the vessel was backing through the south span of the draw of the bridge as indicated on the anchor and with the wind and tide as indicated, she came in contact with an iron crossbeam of the bridge resting on the pier of the bridge of the stationary part of the bridge with only sufficient force to strike and break in the weather boarding or siding of the upper house, which the evidence shows was 1½ inches, and the force of the contact was not sufficient to break those boards clear through, these 1½ inch boards, dressed on both sides, but simply cracked and bent them in, how much force would you say the vessel touched that bridge?

A. It would take a very light blow if it was a sharp corner like that in order to do that. A vessel will, if moving at all, if struck on any sharp corner, the boards will be cut through.

Q. Now suppose captain that immediately upon the vessel striking the cross-beam of the bridge, on the bridge pier, she swung right off from the bridge pier and past on through the span, without any delay, without hanging for even a moment, what would you say as to the control of the master of the vessel as good seamanship or not in that particular?

A. I don't catch the drift of the question.

343 Q. If in the course of backing, that immediately after she struck the cross-beam, she swung off from the pier and continued to back through the span, whether that was the proper move for the captain to make after touching that cross-beam?

A. If there was an opening there was only two things for him to have done and that is to have cast his anchor or go ahead, and go through backwards.

Q. Now captain when the vessel had cleared the draw rest and at the point where she cast her anchor what would it have been proper for the—most advisable for the captain to have done to have dropped his anchor there or to have gone on and put his vessel aground on the south shore, the tide flats.

A. It would depend upon how much river he had and upon what his knowledge of the flats was.

Q. His knowledge is that he knew nothing of the flats at all.

A. If the man is not acquainted with the shore he is taking great chances in running ashore, he is taking chances in tearing the bottom out of her it is a question of more than ordinary risk.

Q. Well there are two alternatives, whether he should anchor or put ashore was it *got* seamanship to anchor?

A. I think so, yes. Any captain takes great chances in putting a vessel ashore, of course if there was nothing but mud, and if he knew it then—they often put vessels on the beaches, they examine it at low water to see that there are no obstructions.

Q. Now captain as I have stated this draw span this rest upon

which the draw span rested when the bridge was open was about 13 feet in length, the vessel having cleared that draw span and the stern swung in a little clear of the bridge, so that it put the vessel at the time the anchor was dropped about 130 or 135 feet from the

bridge, now if he had gone ahead full speed onto the tide flats with the wind and the tide against his starboard side would it have been possible for him to have kept the vessel from colliding with the south bridge or south approach of the bridge?

A. Well I could not tell you, no person could answer that depends upon how the vessel was turning, if the vessel was turning slowly, she may have collided it depends upon the handling of the vessel those things have to be determined by the man that is handling her.

Cross-examination by Mr. HOGAN:

Q. This center here refers to the draw rest of the bridge and the letter "W" we are referring to defendants' Exhibit "I," this refers to the draw rest and that refers to the angle of the vessel when she was here now assuming Captain that there was 450 to 600 feet of water out here to this shore and that this vessel, the distance from here is about 300 feet here to where he started to turn and make that angle with that distance, do you think that 450 or 600 feet of water, out to the south of him here to the west, do you think that he could have completed the curve?

Mr. CROSS: We object to the question is is not based upon the evidence, Mr. Carpenter says it is 400 or 450 feet.

Mr. HOGAN: There is—this scale is 300 feet to the inch. There is navigable water there from 250 to 600 feet at that stage of the tide.

A. I don't know the vessel might not complete the turn at all may be impossible for the vessel in that trim, if the vessel was very light, I don't know whether the vessel could turn or not I could not tell unless I handled the vessel.

Q. Assuming the other hypothesis or supposition that she passed this pier abreast 200 or 250 feet of it or below it and her bow was quartering down the stream then with this expanse of water, navigable water, do you think she could make the turn or was it proper to drop the anchor? You could not tell?

345 A. No one can tell unless he handles the vessel.

I. W. MASON being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. CROSS:

Q. Where do you live Mr. Mason?

A. Aberdeen Washington.

Q. What is your business?

A. I am in the building and contracting business.

Q. How long have you been in that business?

A. In Aberdeen since 1889.

Q. Are you acquainted with the bridge in Aberdeen known as the West bridge?

A. I have seen it several times.

Q. Have you made an estimate or calculation of the value of the stationary span of that bridge, south of the draw span?

A. I have.

Q. Is this the same portion of the bridge that went into the river this last summer?

A. Yes sir.

Q. In figuring the estimates did you take the bridge as it now stands?

A. As it stands now yes.

Q. Did you have anything that would guide you in determining how the bridge was before it fell?

A. I had the plans that were here in court.

Q. Were they sufficient to base an estimate of the probable cost?

A. Nearly everything is on there, some things in details don't appear there some angle blocks and so forth, I had to use my own judgment in estimating them.

346 Q. What size cylinders did you calculate on in making your estimate?

A. Eight foot cylinders, five foot at the low water mark.

Q. How many piles did you calculate on?

A. I calculated, I counted 13 piles in each pier, sixty feet long.

Q. Could you from this estimate calculate what the cost would be for the five foot, and six and seven pile to the pier?

A. About 30% less for the five foot pier.

Q. Have you made a statement of the probable cost of reconstruction?

A. I have.

Q. Will you please state what your estimations are?

Mr. HOGAN: We object to the question for the reason that the witness has not shown himself competent of the things, or knowledge of the cost of bridge material and cost of bridge construction.

Mr. CROSS:

Q. Have you ever built any bridges Mr. Mason?

A. Yes sir I have built some.

Q. Have you ever reconstructed any bridges?

A. Yes sir.

Q. Have you ever dismantled or rebuilt wood or iron bridges?

A. Yes sir.

Q. In this country?

A. Yes across the Wiskah river in Aberdeen.

Q. Do you know the price of materials in Aberdeen?

A. Yes sir.

Q. Such materials as would go into the construction of a bridge like this?

A. Yes sir.

347 Q. Do you know the price of lumber that would be used in such work?

A. Yes sir.

Q. Will you please state what, from your examination of the bridge itself and from the dimensions of the bridge as shown by these exhibits of the plaintiff or details furnished by the plaintiff in the exhibits in this case is?

A. What the detail cost is?

Mr. HOGAN: I would like to cross examine him a little.

Q. You say that you repaired the Wishkah frame bridge?

A. Yes sir.

Q. Is that the extent of your experience as bridge building in this country?

A. No sir.

Q. Where else did you have experience?

A. I had the contract of the bridge across the Humptulips river. I sold out my contract to Douglas Bros.

Q. How far had you got on with the bridge?

A. I drove all the piling and make all the estimates on the bridge.

Q. You didn't build the bridge?

A. No sir.

Q. Did you know the amount of work you did before you sold out?

A. I don't know we started to drive the piling and we had some trouble with the engineer and quit.

Q. Was your bill to Douglas Bros. some \$1400.00?

A. The bill was some \$1100.00 for piling. It was several years ago and I don't remember, I think the bridge was built about 5 years ago.

Q. You don't know whether there was any change since that time?

A. Yes it costs very much more now.

348 Q. And this Hoquiam bridge is much more larger wood than the West bridge, is it?

A. It is built altogether on a different plan. I don't base my figures on the Hoquiam bridge. I base my figures on the plans you have here in court.

Q. How did you base your knowledge on the material, What do you know about the price? Did the blocks of iron, were they castings? Casting blocks?

Mr. CROSS: We object, if he is going to cross-examine him that is one thing, that is no way of testing the qualification of the witness, to make evidence.

Court: Objection is sustained.

Q. Have you ever had any other bridge experience Mr Mason?

A. Not in this country, I built bridges before I came here.

Q. How long since you bought any bridge material?

A. I have not bought or sold any bridge material since about five years ago.

Q. That is the Hoquiam bridge job?

A. Yes sir.

Mr. HOGAN: Object to his testifying, and realize the court may receive it for it is worth.

COURT: Proceed.

Mr. CROSS:

Q. The bridge that is in, this material that is in this bridge, as far as the iron is concerned is old, isn't it, Mr. Mason?

A. I don't think it is all, some of it is new.

Q. Can you segregate any of it?

A. The piers that were put in were new, and some of the rods were new, the "i" beams were new, I was not overlooking at it long enough to see what all was new.

349 Q. State if you will, the cost of the piers themselves, the two piers?

A. I would have to look at my material to see what I figured the piers at, the weight of the steel in the piers is 10,635 pounds.

Q. That is the casings?

A. Yes sir.

Q. That is the eight foot pier?

A. Eight foot at the bottom above the low water mark and about—below the lost water mark it tapers off on an angle to five feet and it runs up to the "i" beam, five feet in diameter.

Q. Go ahead and make your full estimation on those piers as they are now?

A. I estimate the four cross bars, 72 feet at 22—

COURT: If he has that calculated about the material there we might just as well take that.

Mr. CROSS: We want it in relation to the piers, we have to reduce it to four feet, the diameter, we will take it as it stands.

A. The rods on the piers 1/38 and 96 feet long, 363 pounds; 26 piling, 60 feet long at \$10.00 each driven is \$260.00; concrete in the piers estimate in the two piers at 40 yards at nine dollars per yard.

Q. That closes the piers, does it not?

A. Yes sir.

Q. You say that piers 4½ or five feet in diameter would be about what per cent less than the other?

A. About 30% less in weight.

Q. About how many piling?

A. About half as many piles, they could not drive more than six or seven in a five foot pier probably not that much, at most six or seven.

350 Q. Have you a round estimate in dollars and cents of the cost of the piers as they stand now?

A. I have not in one place.

Q. Could you give us an estimate between the cost of 4½ and five foot piers and give it definitely?

A. I think about 30% less.

Q. Clear through?

A. Yes in five foot in diameter more than it would be in 4½ foot.

Q. Have you your figures in such a shape so that you could give us the cost of the piers?

A. I can in just a minute. The piers as I estimated them there came to \$1439.78.

Q. What is your total estimate Mr. Mason?

A. Total estimate of the span as it stands is \$9,258.74, that does not include the north pier at the north end of the span, not including the other pier on the other end of the span.

Q. That is figuring the iron to be new? That is the cost of the iron new to-day.

A. Yes sir the iron is 5½ cents per pound all, right straight through.

Q. What in your judgment would be the amount of depreciation in 15 or 16 years or 17 years?

A. I don't think I could say I am not posted on that. How long it would last.

Q. I believe I would ask you Mr. Mason to deduct, to make a note on your memorandum there the estimate deducting the difference in the casings of the piers.

A. I have it exactly in the right shape I had that there one time I re-figured it and crossed that out.

Q. Make it there where we can remember it.

351 A. I have written on here the cost of five foot cylinder piers about 30% less than is figured in this estimate.

Cross-examination by Mr. HOGAN:

Q. Did you figure, did you take into account the freight on iron?

A. I figured it to be laid down in Aberdeen at 5½ cents, at the bridge?

Q. At the bridge?

A. Yes sir.

Mr. CROSS: We would ask to have this statement marked defendants' Exhibit "2" (Marked Defendants' Exhibit "2"), and as the flag has been identified by the plaintiff's witnesses and as Captain Martin has identified that he saw the flag we introduce and offer the flag in evidence and ask it to be marked defendants' Exhibit "3."

EDWARD HULBERT being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. CROSS:

Q. Where do you live Mr. Hulbert?

A. Aberdeen.

Q. Are you acquainted with the captain of the Norwood, Captain Martin?

A. I am.

Q. Did you see him on the 7th of May, last?

A. I did.

Q. Where was he when you first saw him?

A. He was coming into the dock, the Aberdeen Lumber and Shingle Company wharf.

Q. Was he on his vessel?

A. He was.

Q. What vessel was that?

A. The Steamer Norwood.

352 Q. How long have you been acquainted with the captain?

A. Something over two years.

Q. How often have you seen him during that time?

A. Probably about three times ever- sixty days.

Q. About what time of day was it when you saw him on the 7th of May, last?

A. I think it was some time in the afternoon I could not say as to the time.

Q. You may state in what condition he was in as to being sober or otherwise.

A. I don't know as I have ever seen him otherwise excepting sober, I don't remember him as being in any other way.

Cross-examination by Mr. HOGAN:

Q. Do you know that he drinks Mr. Hulbert?

A. Yes I have seen him take a drink, yes sir.

FRANK BURROWS being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. CROSS:

Q. What is your name Mr. Burrows?

A. Frank Burrows.

Q. Where do you live?

A. Aberdeen.

Q. Are you acquainted with the Chehalis river?

A. Fairly well.

Q. Have you ever steamboated on the Chehalis river?

A. Some.

Q. Are you acquainted with the steamer Norwood?

A. Just know her I have worked around her there.

Q. Do you know where the "G" street wharf is in Aberdeen?

A. Yes sir.

353 Q. Are you acquainted with Mr. West's bridge across the river?

A. Yes sir.

Q. Are you acquainted with the manner in which that bridge opens and closes?

A. To a certain extent yes.

Q. How is it operated?

A. By hand power and electric power.

Q. Were you present that day, did you observe the steamer Norwood go through that bridge about the 7th of May, last?

A. Yes sir.

Q. Where were you when it went through?

A. On Burrows dock.

Q. Were you engaged at anything at that time?

A. Yes sir.

Q. What were you doing?

- A. Working as freight man on the dock.
Q. Did you hear the vessel give any signals?
A. I heard her yes sir.
Q. Where was she when she gave the first signal?
A. She was right there at the "G" street dock when she gave the first signal.
Q. What were those signals?
A. One long and three short whistles.
Q. How was she moving when you first saw her?
A. I don't know as she was moving at all, when I first saw her.
Q. At what rate of speed did she move after she left the "G" street dock?
A. I should judge she was moving between six and eight miles an hour, something like that I am not an expert on distances.
Q. How were the winds and tides on this day?
354 A. The tide was flooding and the wind was westward.
Q. Did you observe her whistle again?
A. Yes sir right off her dock about the mouth of the Wishkah river, right off our dock I mean, the corner of our dock.
Q. What was that whistle?
A. The same as the first one.
Q. Did you know what the whistle meant?
A. Yes sir.
Q. What did they mean?
A. That they wanted to get through the bridge.
Q. Did you notice the bridge at the time she whistled the second time?
A. I looked at it. I didn't notice anything wrong about it.
Q. Was it opened or closed?
A. Closed.
Q. Do you know whether or not the vessel changed her speed when she whistled the second time?
A. She was right out there by the Wishkah when she began to change and slow down.
Q. Slow down?
A. Yes sir.
Q. Did you observe the vessel when she changed her course?
A. Yes sir.
Q. Did she change her course?
A. When she was backing, yes.
Q. Where was she when she was backing?
A. Right by the Wishkah, right opposite it or near there somewhere.
Q. When she whistled the second time?
A. About then yes.
355 Q. Did you observe the bridge open?
A. Yes sir.
Q. Which way did it open when it did open?
A. It opened up stream from the south side.
Q. Did you observe the vessel cast anchor?
A. Yes sir.

Q. How did the vessel go through the bridge do you know?

A. She backed through.

Q. Have you ever had occasion to observe the currents passing through this bridge as to whether the currents of the river are strong there or not?

A. To a certain extent there, they are when the tide runs in——

Q. When the tide runs in what is the effect of the water striking the center pier or center rest?

A. It runs towards the center channels.

Q. Relative to the pier which supports the northerly end of the south approach how is the current set?

A. It sets there same as it would around piling it just circles around.

Q. Referring to Plaintiff's Exhibit "4," here is the mouth of the Wishkah, and here is the bridge up here, here is Wilson's mill, and so on. Now this refers to the resting pier of the draw span this is the south side this is supposed to be the piers that were knocked down, now when the tide is setting in as it was on this day and it strikes this rest what is the effect on the water?

A. It would have the tendency to throw the water this way.

Q. What is the tendency on the vessel there when the tide is running strong?

A. Goes towards this side.

Q. Towards the rest on the south?

356 A. I can judge from the surface of the currents not below the water.

Q. Have you ever been aboard of the vessel when they were going through there?

A. Yes sir.

Q. Have you ever had vessels to go against this pier on the south side?

A. No sir.

Q. What vessel was you on?

A. Iola and the steamer Skookum and the Harbor Belle.

Q. Have you ever seen saw logs towed through this opening in the bridge?

A. Yes sir.

Q. Have you ever known of any rafts of logs going against these piers?

A. Yes sir.

Q. What would be the effect or result for the logs to strike the piers?

A. They bumped up against the piers and swung off on down the stream.

Q. State whether or not it was frequent the logs striking against the piers?

A. Quite frequent that they hit the piers.

Q. Were those collisions of the rafts with the piers from various directions or from the same direction?

A. From every direction.

Q. Have you seen them strike this pier or these piers from the eastward and from the westward?

A. Yes sir.

Q. Were there ever any dolphins there?

357 A. Yes sir.

Q. What has become of those dolphins?

Q. The steamers knocked one of them down with the rafts in tow, that was the one that the center pier, that the bridge rests on.

Q. The south bridge rest?

A. You mean which pier the steamer knocked out?

Q. Yes.

A. The one on the west end of the long bridge pier where the bridge rests.

Q. Down stream?

A. Yes sir.

Q. Where the bridge rests when it is opened?

A. Yes sir.

Q. Now do you know when those went out? They were on the west of the stationary piers or rests?

A. West of the stationary piers?

Q. Yes sir.

A. No sir.

Q. I mean the dolphins that were west of the piers, that were where the bridge went down the end of the bridge that went down?

A. No sir I don't.

Q. You say they were knocked down by rafts of logs?

A. I don't know what they were knocked out with.

Q. What was generally the effect of the rafts going against those piers?

A. I don't know the effect, what the effect was I could not say hardly.

Q. What would they do with the raft.

358 A. The only way to get out was to use the pe-vy and pry them off the only way to get them off was to pry them off with a pe-vy.

Q. Did you ever know them to get their tow boats around and pull them back?

A. Yes sir.

Q. How long have you ever known any rafts to hang on those piers, at any time?

A. 15 minutes I should judge. As long at one time.

Q. About how long does it take to open the bridge by electricity?

A. 1½ or two minutes I should judge.

Cross-examination by Mr. HOGAN:

Q. When the rafts would hang up there Mr. Burrows it was because it was too large some were too large to go through the way they were drifting?

A. Yes sir.

Q. You say the Norwood whistled for the bridge the second time about opposite your wharf there at the mouth of the Wishkah river?

A. Yes sir.

Q. And that he slowed down there?

A. Yes sir.

Q. How far was that from the bridge?

A. I don't know it is about, I don't know just how far it would be.

Q. Could you estimate it?

A. I think about eight or nine hundred feet.

Q. Did you see him back up?

A. Yes sir.

Q. Did he back up there? right after he whistled the second time?

A. That is when I noticed him back, yes sir.

Q. He swung to the south did he his stern swung around the bow of the vessel down to the south side of the river?

359 A. Yes sir.

Q. When the stern began to swing around in the river how far from the bridge was he?

A. He drifted up to about 200 or 100 feet, I think I am not sure.

Q. Did you stand and watch him during this time?

A. Yes sir.

Q. How far to the south did he go before he cast anchor?

A. Before he cast anchor?

Q. Yes.

A. He was out there just about I should think about half way across the channel when he dropped anchor.

Q. Half way across the channel when he dropped the anchor?

A. Yes sir I think so.

Q. You say you saw the dolphin at the west end of the pier rest, or the center rest torn out by the Skookum?

A. I knew when it was taken out by the Skookum.

Q. Just look at plaintiff's exhibit "4" and referring to the pier rest run up and down the river, you say the dolphin at the west end was torn out by the Skookum? The one out towards the wharf?

A. I don't know only they told me at the office.

Q. You didn't see them take it out?

A. No.

Q. You don't know as a matter of fact whether it is so to-day or not?

A. I don't know only what the captain of the Skookum said.

Q. *Mr. Hogan*: We ask that the testimony in regard to that may go out then.

Q. We ask that the testimony in regard to that may go out then.

ROBERT HERMAN, being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. CROSS:

360 Q. Give your name, residence?

A. Robert Herman, Aberdeen Washington.

Q. Where were you about the 7th of May last?

A. I was in Aberdeen at the time the accident happened.

Q. Did you see the Norwood on that day?

A. Yes sir.

Q. Did you go to the bridge or near its locality?

A. Yes sir.

Q. And when were you then?

A. When I heard the ship whistle I was down on Heron street and I said let us go down and see the boat land, I saw her pass and said that she was going right on up.

Q. About how far out how far had you to walk how many blocks did you walk?

A. About one and one half blocks. I didn't start until I first heard her signal.

Q. Whereabouts on the Heron street was it?

A. Right in front of the Our House saloon.

Q. Where was it when you got—which dock did you go to see it land?

A. Burrows dock.

Q. Where was she when you got to the Burrows dock?

A. She was I could not say about how far she was from the bridge. Almost up to the bridge.

Q. Did you hear her whistle the second times?

A. Yes sir.

Q. Did you see the bridge start to open?

A. Yes sir.

Q. Which way did the south end open of the bridge?

A. The south end started down the stream.

Q. How did it finally open?

361 A. Up the stream.

Q. Did you see it open or close did you see it go back?

A. Yes sir.

Cross-examination by Mr. HOGAN:

Q. How long have you lived in Aberdeen Mr. Herman?

A. Over five years I should judge.

Q. What did you work at?

A. In the woods.

Q. Where have you worked last?

A. Hulets & Sargents logging boom.

Q. When did you quit work there?

A. The Thursday before the election.

Q. Where did you work before that?

A. Before that?

Q. Yes.

A. I worked up on the North river.

Q. How long had you been in town on the 7th of May?

A. I could not state just exactly.

Q. You were on Heron street in front of the Our House Saloon?

A. Yes sir.

Q. Who was with you?

A. Frank Razor.

Q. And you said to him, lets go down and see the Norwood land?

A. Yes sir.

Q. Are you acquainted with anybody on the Norwood?

A. Not a soul.

Q. You knew it was the Norwood?

A. I didn't know at the time until I saw it.

Q. You went to go down and see it land?

A. I thought there was some passengers coming from San Francisco.

362 Q. You heard it whistle?

A. Yes sir.

Q. Did she blow more than once at that time?

A. Yes more than one?

Q. How many?

A. I could not say.

Q. And you say she was going right on up?

A. Yes sir.

Q. Did you see her go up?

A. I seen her after I got to the wharf.

Q. You were walking?

A. Yes sir.

Q. What time of day was that?

A. In the forenoon or afternoon I could not say.

Q. Where is Rasor?

A. I think he is up in camp now.

Q. How far did you have to walk?

A. I think a block and a half.

Q. What street did you take to go down to the wharf?

A. I think it was "H" street.

Q. You went down "H" street to the wharf?

A. Yes sir I think that is the name of the street.

Q. You were at the foot of "H" street then were you?

A. I was right at the wharf when she hit.

Q. You say she was up about to the bridge when you got to the wharf.

A. A little way from the bridge.

Q. How far?

A. I could not say.

Q. Which way was she heading?

A. She had her anchor out.

Q. That is the first sight you got at her?

363 A. Yes that is the first sight I got — her, we could not see what was going on before that.

Q. You say the south end of the bridge was moving down stream?

A. Yes I saw the south end of the bridge go up stream.

Q. The boat was letting out her anchor was she?

A. Yes she was swinging around at the pier of the bridge at the time she hit.

Q. Which anchor did *you* have out?

A. I could not say which one it was.

Q. Which way was the bow of the boat pointed?

A. Down stream pretty well pointed down stream.

Q. Pointed down stream, with the bow pointed down stream?

A. Yes down stream.

Q. Who did you first talk with about coming here as witness about this accident?

A. I think a man served the papers on me?

Q. Is that Harman?

A. Yes sir.

Q. Were you up here yesterday?

A. Yes sir.

Q. When did you first talk to him about it?

A. The day he served the papers on me.

Q. What day was that?

A. I could not say.

Q. How long ago?

A. Some three or four weeks ago.

Q. Is he related to you?

A. I never saw the man before to the best of my knowledge.

Redirect examination by Mr. Cross:

364 Q. Is he related to you?

A. No sir.

Q. Do you know if that was "H" street or some other street or not?

A. I am not positive. I think it is "H" street.

Q. It runs towards the Wishkah river down to the wharf. The first street next to the river?

A. Yes sir.

Recross-examination by Mr. HOGAN:

Q. Where are you boarding?

A. At the Palace Restaurant.

Q. Where do you live?

A. Over Becker's Bicycle store.

Q. You have a room there at the present time?

A. Yes sir.

Q. Did you receive any money to come up here?

A. All I received was the fees, subpoena fees.

CHESTER STRAYER, being duly sworn on behalf of defendants, testified as follows:

Direct examination by Mr. Cross:

Q. What is your name please?

A. Chester C. Strayer.

Q. Where do you live?

A. Aberdeen.

Q. Are you the Strayer referred to by Mr. Burrows in his testimony as being with him on the wharf?

A. I was on the wharf not exactly with Mr. Burrows though.

Q. Did you see Mr. Burrows there that day?

A. No sir.

Q. What were you doing there?

365 A. I was standing at the door of S. E. Hicks & Company's warehouse looking at the boat.

Q. What day were you looking at the Norwood.

A. I don't know the exact day, it was in May.

Q. Did you observe this vessel as it went toward the bridge that day?

A. Yes sir.

Q. Which side of the bridge was it making for?

A. The north or south side, it seemed to be making towards the south of the draw.

Q. Which side do you call the south side?

A. I had it for granted that the south side was opposite Wilson's and the other side is south side.

Q. Where was she when you saw her?

A. I was standing in the door of S. B. Hicks & Company's warehouse.

Q. That is on the wharf?

A. On the wharf yes sir.

Q. Did you observe the bridge when it opened that day?

A. Why yes I saw it when it opened.

Q. Do you know which way it went or opened?

A. The end next to Wilson's mill, the end towards Wilson's mill opened towards me.

Q. Towards where you were standing?

A. Yes sir in that direction.

Q. How far was the vessel from the bridge when you saw it open or start to open?

A. About fifty yards.

Cross-examination by Mr. HOGAN:

Q. You were watching the bridge all the time were you?

A. Not all the time.

366 Q. The first time you noticed the bridge was Wilson's end swung around towards you, when it opened?

A. Yes sir.

Q. Where was the vessel then?

A. I should judge about 50 yards from the bridge.

Q. Towards you?

A. Yes sir.

Q. In your direction down in your direction?

A. In my direction yes sir.

Q. Straight line between you and Wilson's mill, about in line with Wilson's mill?

A. Yes sir.

Q. Not square towards, in center of the stream?

A. No sir.

Q. Towards which draw of the bridge which opening of the bridge was he going towards?

A. She seemed to be going towards the opening opposite Wilson's mill.

Q. Near Wilson's mill?

A. No the other side.

Q. Which way was the bow of the boat pointing at that time?

A. Up stream.

Q. Would you call up stream towards Montesano?

A. Yes sir.

Q. Where do you live?

A. Aberdeen.

Q. What place?

A. I am living at the Kennelworth.

Q. Are you rooming there?

A. Yes sir.

Q. How long have you been rooming or living there?

367 A. About a month.

Q. What were you doing during this month?

A. Working for the C. E. Burrows & Company.

Q. Working for them?

A. Yes sir.

Q. What kind of work?

A. Freight clerk on the dock.

Q. Who did you talk with about this case?

A. Why that I would not say as to that I was with S. B. Hicks & Company at that time, I would not say who I spoke first to about the bridge.

Q. Did you talk with Harman?

A. I don't know his name, I am not acquainted with him.

Q. Who subpoenaed you?

A. The same man.

Q. When were you subpoenaed first?

A. The same time Mr. Burrows was.

Q. How long ago was that?

A. Probably three or four weeks ago.

Depositions of C. D. Schwartz read and submitted.

Deposition of William Anderson read and submitted.

Deposition of May Dickey read and submitted.

Deposition of Captain Frederickson read and submitted.

E. E. KELLOGG being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. Cross:

Q. Give your name and residence?

A. E. E. Kellogg, Aberdeen, Washington.

Q. What is your business?

A. I am a steamboat man.

368 Q. In what capacity have you been and are now?

A. Master.

Q. How long have you been master of vessels?

A. I have been master of vessels for about three years.

Q. On what waters?

A. Grays Harbor and its tributaries.

Q. Are you acquainted with the "G" street dock in Aberdeen?

A. Pretty well.

Q. Do you know the location of the bridge known as the West bridge relative to the dock?

A. I do.

Q. Have you ever had occasion to ply the waters of the Chehalis through this bridge?

A. Yes sir.

Q. For how long a time?

A. Well for the last — since I have been master of vessels I think.

Q. Have you been running that way since the bridge was built?

A. Yes sir.

Q. Do you know whether or not there were dolphins at the end of these piers on the south side resting piers of the swinging span?

A. They had been there and they had been knocked out.

Q. Do you know what carried them out?

A. I presume it was rafts that carried them out.

Q. Do you remember about the size of those dolphins?

A. I could not tell you the number of piling exactly but I could come close to it.

Q. As you remember it approximately?

A. I should say eight or nine piles in those dolphins, *the*, on the average.

369 Q. In those dolphins?

A. They were fastened together.

Q. They were fastened together on the top?

A. Yes sir.

Q. About how long did those dolphins remain there? After the bridge was built?

A. I could not *said* not very long.

Q. In your observations have you ever observed rafts of logs colliding with the piers, that one at the south rest?

A. Of course I have seen rafts coming through there both ways, but I have not seen them come in contact with those particular dolphins but I have seen them collide with the center pier.

Q. Have the rafts carried out dolphins at the center pier?

A. Yes sir.

Q. Have you seen rafts up on those piers? Hanging up on those piers?

A. I could not say hanging up, for a little probably, a little while.

Q. Where were you on the 7th of May last?

A. I think I was working on the Harbor Queen.

Q. Do you know what that bridge, how it was operated with what power?

A. It was supposed to be operated by electricity.

Q. How frequent were you required to go through this bridge during the last year or such a matter?

A. I was on the ferry boat there during the time they were building the bridge just a month or so before they completed the bridge I made 21 trips across that river daily on the ferry.

Q. From the time the bridge was completed?

A. From the time the bridge was started until within a month or so before it was completed.

Q. Did you see them drive the dolphins for the casing
370 which afterwards went to make the pier?

A. You mean for the last bridge?

Q. No, the first one.

A. Yes sir.

Q. How many pilings did they have for those casings?

A. Eight or nine piling in each casing, the same number as in the dolphins at each end, of course these piling were driven straight down.

Q. Are you acquainted with the force and effect of driving dolphins straight and driving them apart and drawing them together as to resistance?

A. No I have not I know they drove the dolphins that way to brace them.

Q. When they went to drive a dolphin how did they drive it?

A. They usually drive them a little ways on the bottom.

Q. What did they fasten the tops with?

A. Sometimes with chains, and sometimes with cable wire.

Q. Wire cable?

A. Yes sir.

Q. You say the ones they drove for the casings were driven perfectly straight?

A. As near as possible.

Q. Did you observe the Norwood on the 7th of May last?

A. I believe I did, yes sir.

Q. What is that?

A. I did, yes sir.

Q. Where were you?

A. I was working on the Harbor Queen at that time.

Q. Where was the Harbor Queen?

A. The Harbor Queen was lying at the Douglas Bros. dock, that is Wilson's landing or property and is known as Wilson's
371 dock by Burrows' dock.

Q. Where is that dock relative to the "G" street dock and the bridge?

A. Right between.

Q. Did you observe her when she left the "G" street dock?

A. Yes sir.

Q. State what if anything she did.

A. Well I saw the Norwood when she was coming in that morning and tied up at the "G" street dock and discharged her freight and cargo whatever they had, and first after he got through discharging his freight I heard her whistle for the bridge just as he was casting off his lines.

Q. Where on the vessel were you?

A. I was standing about midship.

Q. Where was the Norwood lying relative to the stream?

A. Lengthwise with the stream.

Q. Could you observe up and down the Chehalis river from where you were standing?

A. I was looking right out where I could see up and down the river.

Q. Did you observe her movements as she went towards the bridge?

A. Yes sir.

Q. Did you observe the bridge as well?

A. Yes sir.

Q. What if anything did they do with the bridge, what movement of the bridge did you observe after she whistled.

A. What drew my attention more than anything else I heard him whistle the first time before the whistle for the bridge and I saw her go up and was not very far from where he started, he was going slow and I saw him blow again for the bridge.

372 Q. How did this second whistle compare with the first in blast or sharpness?

A. It was full and sharp, and I stepped out again to see what was the trouble, and I saw he was making for the bridge.

Q. Was the bridge open then?

A. No the bridge had not opened yet.

Q. What if anything did the vessel do at the time of the blowing of the second whistle?

A. I believe he stopped his engines and was drifting, whether he stopped his engines before he blew his second whistle or not I don't know I was not close enough to tell.

Q. Did you observe the movement of the vessel after he blew the second whistle?

A. Yes sir.

Q. What opening did he appear to be making for?

A. Well he was apparently making for the north side of the bridge, he was on that side of the river, and was handier to go through that side, than to go through the other side if he was so close to the bridge.

Q. As to the whole distance about how much of the distance had the vessel passed through between the "G" street dock and the bridge when it blew the second time?

A. I don't quite understand the question.

Q. Compare with the whole distance how far had the vessel gone when she whistled the second time?

A. I should judge she had gone one-third or a little over probably of that distance.

Q. Now did you observe the movement of the vessel after the second whistle?

A. Yes sir.

373 Q. What was the movement as to whether it was fast or slow?

A. He stopped his engines as near as I could see and was drifting there was a strong tide and strong wind blowing, the vessel of course didn't stop immediately.

Q. If he stopped his propeller as to the direction what course was he going?

A. He was making for this side of the bridge.

Q. Did you continue to watch the vessel and the bridge?

A. Yes sir.

Q. Did you see the bridge when it first started to open?

A. Why as to that I could not say whether they started to open it or not, I judged that they did.

Q. How is that?

Mr. HOGAN: State what you saw.

A. It looked to me that they were not going to get it open in time for the vessel to go through and the captain tried to get out of the way.

Q. Did you say you saw it open? Did you say for sure whether it opened or not? Did you see it finally open?

A. Yes sir.

Q. Which way did it finally open?

A. It finally opened up the stream got over on the south side, they opened it up stream.

Q. What part of the bridge went up stream? Or swung?

A. The south end of the bridge.

Q. Would that be the direction that the vessel was going on the south side?

A. Yes sir.

Q. About what position of the stream was the vessel in when the bridge, when you remember the bridge to be open or opening?

A. The steamer was practically across the current across the stream, right across the stream.

Q. Could you see or judge of the distance between the vessel and the bridge when the bridge began to open?

A. Well I could not say, I judge close to it.

Q. Have you had experience in going through this bridge when the bridge would be opened by electricity?

A. Yes sir.

Q. Have you had experience in going through when it would be opened by hand?

A. Yes sir.

Q. Do you know about the distance on, do you know the difference in the rapidity when it opened by hand and when it opened by electricity?

A. As I understand you right——

Q. How much more rapidly was it opened by electricity than by hand?

A. It opens considerably faster by electricity than by hand.

Q. Could you tell from where you were how it was being opened?

A. Yes sir.

Q. How was it opened?

A. It had been opened by hand all morning that particular morning they opened it by hand several times.

Q. You observed that did you?

A. Yes sir.

Q. In this particular instance could you tell whether it opened by hand or electricity?

375 A. The steamer was between me and that part of the bridge, at that particular part, at that particular time, and I could not see.

Q. Did you see the vessel let go of her anchor?

A. Yes sir.

Q. What position was she in the stream when she let go of the anchor?

A. She was cross-wise, with the current.

Q. Relative to the rest of the draw span on the south side was she?

A. I should judge the rest of the draw span was about, it would be about midships of the vessel.

Q. State whether or not you observed whether the vessel dropped her anchor and then stopped as soon as the anchor was cast?

A. No sir.

Q. What direction did she continue to take?

A. It continued going up stream.

Q. As to the motion of the vessel after the anchor was cast what motion did she take?

A. When the vessel got that far, he saw he could not make the turn and dropped anchor and his anchor drug and he saw that he was going broadside against this draw span and he undertook to back his vessel straight through.

Q. Could you tell from where you were that he was dragging his anchor?

A. He was yes sir I could tell.

Q. Now relative to the bridge itself have you any remembrance Mr. Kellogg as to whether or not the stern of the vessel followed the bridge as it opened or was the bridge entirely open as she swung in?

A. No sir the bridge was not entirely open then, they swung it open and the boat followed it through.

376 Q. Under the conditions as you say there were, would it have been possible for the bridge to have opened with the south side down stream at that time?

A. Not without striking the steamer.

Q. That is what I mean and collide with the stern of the vessel?

A. Yes sir.

Q. Do you know whether or not that bridge can revolve on its center pivot clear around?

A. Yes I think it will. And I believe I have seen it revolve clear around.

Q. Have you ever observed it go beyond its center?

A. Yes sir.

Q. Have you ever observed it go beyond its center and go with the south end up stream, have you ever seen it go clear around?

A. I think I have.

Q. Is there any dead center for that bridge when it goes on the middle pier or its rest?

A. No sir.

Q. It simply stands on this pivot?

A. Yes they can. They can set the jacks wherever they want it, one foot or twelve feet or any number of feet.

Q. And unless the jacks are set that bridge can keep turning around and around if they want to?

A. Yes sir.

Q. What machinery, do you know anything about the electric machinery that is used there?

A. No sir.

Q. Are there any piers or dolphins in the river now to protect these same piers that were replaced?

A. Yes sir.

377 Q. Do you know how many piling are in those dolphins, about how many?

A. Well I should judge there is 15 or 18 piling in each of these new dolphins.

Q. Are the piles driven at each end of this pier or these piers of that pier rest?

A. There is on this new part that they rebuilt.

Q. Are they fastened together all these piles?

A. Yes sir.

Q. Do you know about how many piling they put in these new piers.

A. Yes sir.

Mr. HOGAN: We object, it is all right to testify to, but this is the third time.

Mr. CROSS: It is preliminary to another question that we ask him.

Q. How were those piling driven there Mr. Kellogg?

A. The last ones that were driven?

Q. Yes sir.

A. They are driven pretty well together on the bottom.

Q. Driven straight or on a slant?

A. Driven on a straight line, driven straight.

Q. Do you know how many there were on each of the piers?

A. I think there is I would not say for sure but I should say that there is twelve in one and thirteen in the other, I think.

Q. Were those piling smaller or larger, or similar, to those that were in the first ones?

A. Considerably larger piling.

Q. Did you see them when they were cutting off ready to receive their casings?

378 A. Yes sir.

Q. State whether or not the top of those piling were close together or otherwise?

A. They drew them together by a wire cable to get the casings over them.

Q. Did you see them put the cable over them?

A. Yes sir.

Q. How did they stand?

A. They didn't stand quite as close on the top as they put the cable around, but pretty close?

A. As close as piling ordinarily would be when driven in a bunch?

A. Yes sir.

Q. Did you see any flag displayed on the bridge? About the time that the Norwood was approaching the bridge or just before?

A. No sir.

Q. Were you looking for the flag, or were you looking at the vessel?

A. I was looking at the vessel more than anything else. I thought probably there would be a little trouble there.

Q. Did you observe any wagons or teams across or crossing the bridge in the mean time?

A. No I don't think I did.

Q. I believe you stated that after she whistled the first time you turned into the boat and was doing something else was that right?

A. Yes sir.

Q. Are you acquainted with the tide flats or tide lands on the south side or near the swinging span of this bridge?

A. I am pretty well acquainted with it.

Q. I will ask you whether or not those lands have washed out and become deeper and shallower since the bridge was built?

A. Filling in all the time.

379 Q. Filling in under this bridge?

A. Filling in yes and where we used to land with the ferry boat, is high and dry at low tide, a year or so ago, it goes dry at low tide.

Q. Have you taken any observations to know how far you- landing now is there, from this pier that went out?

A. Which landing is that?

Q. The ferry landing on the south side?

A. I should judge it would be about 60 or 75 yards up to the north of the bridge up stream.

Mr. HOGAN: From the ferry to the pier that was damaged?

A. No sir from the bridge.

Q. You mean on a straight line?

A. On a straight line from the bridge to the ferry landing.

Mr. Cross:

Q. How far was the ferry landing extended out in order to get the water deeper or deep enough?

A. The ferry had been extended out the third time during the last eight or ten years probably that length of time.

Q. Where it was extended about a year or such a matter ago?

A. I take that back, about the year, but I say they extended it out I could not say just when but it has been extended during the last three or four years, they extended it out once.

Q. You could not say just when?

A. I could not.

Q. How far was the dock extended at that time?

A. They extended it out may be a hundred feet or more.

Q. How deep is the water at your landing now at low water?

A. I am not on the ferry now but I can tell you the depth
380 of the water there pretty near, there is about nine feet of
water there at low tide.

Q. Do you know whether the tide flats are deeper or shallower west
of the bridge or north of the bridge?

A. I think it is a little more shallow there at the bridge than at
the ferry landing on account of the boats running through.

Q. Do you know whether the tide flats are shallower at the
Leitch mill than at the boom on the east?

A. I think it is a little bit.

Q. Could you tell which occurred first the changing of the vessel
from her course southward or the commencement of the opening of
the bridge?

A. Well that I could not say. The captain could see right away
that they were not going to get the bridge open for him.

Mr. HOGAN: You may not state what he could see.

Mr. CROSS:

Q. Could you tell from where you were which occurred first?

A. Well I don't exactly understand you.

Q. You saw him change his course?

A. Yes sir.

Q. Had the bridge started to open when she changed his course?

A. I could not say whether they started to open the bridge at this
time or not.

Cross-examination by Mr. HOGAN:

Q. When did you ever make any soundings on these so called
tide flats, there near the ferry landing or near the Bryden & Leitch
mill did you ever make any?

A. Not particularly soundings, but a man can tell when he is
running onto tide flats.

381 Q. You have run upon these flats with the steamer?

A. Yes sir.

Q. How far in from the draw span? The one that was damaged,
how far south?

A. As near as I understand the bridge was 260 feet long so I have
run in 260 to 300 feet.

Q. With what vessel?

A. I have run in there with the Progress.

Q. At what stage of the tide?

A. All stages of the tides.

Q. What other vessels?

A. I have been there on other vessels that I was deck hand on, a
long time ago.

Q. How much water did you find there at low tide?

A. There is a difference in tides.

Q. The average low tide?

A. You can get any depth of water you are a mind to, you can
run in there as close as you can with a boat drawing twelve feet of

water, or only drawing three feet. At times I would touch bottom with the Progress.

Q. How much would the Progress draw?

A. I should judge about four or five feet.

Q. What particular time did you run on the flats with the Progress?

A. I could not state the time.

— You have come to the opinion that it has shallowed up there from year to year?

A. Yes sir.

Q. How much has it shallowed during the past year?

A. I could not say.

Q. You don't know?

382 A. I could not say.

Q. You have not paid any attention to it?

A. Yes I have paid attention to it.

Q. You have seen them change this bridge around from end to end have you?

A. Yes sir I think I have.

Q. How much past the center?

A. Probably a foot or probably 20 feet. I didn't measure it I have seen them go around past the center.

Q. That is in swinging it around to the center you have seen them pass the center of the pier with it?

A. Yes sir.

Q. And for that reason you say they can swing it around for end for end?

A. Yes sir.

Q. How much past the center have you seen them swing it?

A. If they can go on- foot past the center they can go around and around as Mr. Cross stated.

Q. She can go around indefinitely?

A. Yes sir.

Q. You judge because she can pass the center she can go around and around?

A. I suppose they can yes sir.

Q. Do you know anything about the cable that runs that bridge, that opens it, do you know anything about the construction of the cable?

A. I don't know anything about that business at all I am not a electrician, I have seen the cable and seen it tore out.

Q. Do you know how far they can go past the center without breaking the cable, do you know what effect it would have on the cable?

383 A. I don't know what effect.

Q. You don't know whether that would break the cable or not?

A. No sir I don't.

Q. You don't know anything about those things yet you come in and testify that the bridge turned around and around, when you say

that it could go a little past it, it could go all the way around, you base your theory on that?

A. Yes sir.

Q. Which side of the bridge is that toll house on?

A. The toll house is on the south side.

Q. On the south side the west side? In going to the south approach, the toll house is on which end east or west?

A. The right hand.

Q. The toll house is between you and the toll house is on there on the south side did you ever see it on any other side when you went over the bridge?

A. I was only over that bridge once.

Q. Did you ever see that toll house?

A. Yes sir.

Q. On any other side when the bridge was closed?

A. I never seen the toll house change its position on the bridge I have seen the bridge change its position and change the toll house's position.

Q. That is you can open the bridge up or down?

A. Yes sir.

Q. Did you go over the bridge after the accident with the steamer Norwood, did you notice the location of the toll house on the bridge after that?

A. No I don't believe I did.

Q. Now the location or position of that toll house would indicate the way the bridge had opened would it not?

A. I don't know as it would.

Q. You don't believe it would?

A. I don't believe anybody noticed it or paid any attention to it at that time.

Q. If it opened the way you said it opened with the south end up stream on which side would the toll house be on the bridge when it opened?

A. Why the house would be on the south side of the resting pier.

Q. South side of the resting pier?

A. Yes sir.

Q. If the toll house was on the north side of the resting pier it opened the other way?

A. I don't say it did.

Q. At what particular time?

A. What?

Q. Did you see them trying to close the bridge after the damage was done?

A. I don't know I don't think I did.

Q. Did you see them swing the bridge around?

A. I don't think so.

Q. How far away from the bridge were you when you were making these observations?

A. I was there at C. E. Burrows dock.

Q. How many feet.

A. I don't know.

Q. You say you have been plying this expanse of water since the bridge was built can't you give us some idea?

A. Probably some idea.

Q. How far?

385 A. About a thousand feet or fifteen hundred feet away.

Q. A thousand or fifteen hundred feet away?

A. Yes sir.

Q. Was it a clear day?

A. Pretty clear.

Q. You seen this flag on the bridge during this morning?

A. No sir.

Q. Your boat had not been out that day?

A. No sir.

Q. Who else was on your boat that day with you?

A. I think James Wilson, the engineer was there at the time.

Q. Who else?

A. A fellow by the name of Arthur Johnson, only three there I believe that morning.

Q. You and Jim Wilson and Arthur Johnson, were there was all that was on the boat?

A. Yes sir.

Q. Who first interviewed you about coming as a witness?

A. I don't know the gentleman's *man*, I think his name is Harman or such a name. He is a Tacoma or Seattle man, I think it was in July some time if I remember right.

Q. Have you been with him and talked with him since?

A. No sir I have not.

Q. Did he tell you that the south side opened up stream?

A. No sir he did not.

Q. Did you tell him that the south side opened up stream?

A. No sir.

Q. You never have since?

A. He never asked me which way the bridge opened.

Q. He never asked you what you knew about it?

386 A. I don't think the man ever asked me what I knew about it.

Q. He never asked you what you knew about it?

A. No sir he asked me some things but not that.

Q. He never spoke about how the bridge swung?

A. No sir.

U. S. DUTCHER, being duly sworn on behalf of defendants, testified as follows:

Direct examination by Mr. Cross:

Q. Give your name and residence.

A. Dutcher is my name.

Q. What are your initials please?

A. U. S.

Q. Where do you live?

A. Aberdeen.

Q. Were you or are you acquainted with Captain Martin?

A. Yes sir slightly.

Q. Where did you get acquainted with him about when?

A. I first met him in San Pedro I remember of meeting him in California.

Q. Were you on board the steamer Norwood when she arrived in port at Aberdeen about the 7th of May last?

A. Yes sir.

Q. Were you in a position to observe the captain's movements as he came in from the sea?

A. I think so yes, I was a steerage passenger and I was out on the boat to see what was to be seen I got up that morning about sunrise.

Q. Where was she when you got up?

A. Out on the Harbor just as we pulled in close to the bar

Q. Where was the captain during all this time?

387 A. When I seen him he was standing on his watch that morning when I got up.

Q. State whether you observed him from time to time until you arrived in Aberdeen?

A. I don't remember just what time he had breakfast, he was sounding the bar as we crossed and he was giving orders.

Q. Was he on the bridge when he was doing this?

A. I don't know what you call the bridge.

Q. The upper part.

A. Yes he was on the upper part.

Q. Did you see him when the vessel made her landing at the port or dock at Aberdeen?

A. Yes sir.

Q. You may state if you know what condition the captain was in as to being sober or otherwise?

A. Well as far as I know he was in good condition so far as I could see the way he handled the men.

Q. Did you ever observe him off duty? At any time from the time you came over the bar?

A. I never seen him go off his watch or duty, that is he was up on what you call the bridge.

Cross-examination by Mr. HOGAN:

Q. Did you see any liquor drinking on board the vessel on the trip up?

A. No sir.

Q. You are sure of that?

A. I never seen any liquor I didn't if any one had any I didn't see any, I didn't see any liquor.

Q. As a steerage passenger you are supposed to keep below aren't you?

388 A. At meal hours.

Q. You eat above?

A. No below.

Q. Were there any women on board any steerage women?

A. Not that I know of.

Redirect examination by Mr. Cross:

Q. Was the captain's wife and children aboard?

A. That is what some of the engineers said the captain's wife was on board and some of the boys said that was captain's little boy who was working around at one thing and another.

Captain JOHN I. MARTIN re-called:

Direct examination by Mr. Cross:

Q. State whether or not on this trip on the 7th of May last and while you were going through the bridge your wife and children or child as the case may be were aboard?

A. Yes sir.

Q. How many children have you captain?

A. Four.

Cross-examination by Mr. HOGAN:

Q. Captain do you know E. H. Shelley of Shelley Brothers of Aberdeen the South Aberdeen grocer?

A. I suppose I know him.

Q. You know him by sight?

A. I don't know whether I do or not.

Q. Do you remember of meeting one of the Shelley Brothers at the Aberdeen Lumber and Shingle Company's wharf then as you landed?

A. No sir I don't remember.

Q. I will ask you whether you met one of the Shelley Brothers around there and he spoke to you and said you had a little bad luck with the bridge?

389 Mr. Cross: We object to this, it is improper examination if you *would* to lay grounds of impeachment then formulate your questions accordingly.

Q. Did you say that you didn't give a dam- or god dam- either one of those statements?

A. No sir. I saw Mr. Hulbert and I went and had my dinner.

Q. How much liquor did you take aboard when you left San Francisco and San Pedro, when you were in port?

A. Didn't have any.

Q. How much did your passengers take aboard how much whiskey aboard?

A. This time I didn't have any generally we have some we are supposed to carry some for medical purposes.

Q. I will ask you if some of your passengers and crew were not drinking on that trip?

A. No sir not that I know of.

Q. Were any steerage women on board?

A. No sir.

Q. How many women were on board?

A. There were three women, in one room one was sick and I carried her ashore.

Q. How many cases of beer were taken aboard for the accommodation of these women?

A. I didn't see any taken aboard.

Q. I will ask you if your passengers or some of them and some of the crew were not drinking on the way up and some intoxicated from San Pedro or on the way up?

A. No sir not that I saw.

Q. You say that there was no whiskey aboard?

A. I could not say the passengers generally carry some.

Q. Did the ship itself have any whiskey aboard?

390 A. The ship itself?

Q. Yes sir.

A. It might have had I could not tell.

Q. Wasn't there some discovered over the bar and they finished it before you got in?

A. I watched until eight o'clock before I crossed the bar.

Q. Where did these women get off the boat?

A. They got off the boat at the "G" street dock because one of the women had a miscarriage on the way coming up.

Q. Do you know where they went to?

A. I know these women went to Seattle, one of them did and the other one lived in Aberdeen, Mrs. Carter, I believe is her name.

Q. Do you know what part of the town she is living in?

A. No sir I don't.

WILLIAM THOMAS SHERBORNE being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. Cross:

Q. Give your name Captain.

A. William Thomas Sherborne.

Q. Where do you live Captain?

A. In London, England.

Q. What is your business or what do you follow?

A. Master mariner.

Q. Are you engaged in that business at the present time?

A. I am.

Q. What vessel are you in command of?

A. The steamship Black Heath of London England.

Q. What port is she in at present?

A. She is in Aberdeen.

391 Q. What is the capacity of your vessel?

A. About 4500 tons, dead weight, I could not say the number of feet of lumber.

Q. And what are her dimensions?

A. Three hundred feet long, forty-three feet wide and when loaded she draws thirty two feet and six inches.

Q. She is a steamship?

A. Yes a steamship.

Q. Have you been master of other steamships during your experience.

A. Yes a good many vessels.

Q. About how long have you been a master mariner?

A. Since the 20th day of October, 1868, thirty eight years.

Q. During that time what waters have you been plying?

A. All over the world sir, every part of the world you can mention, sir.

Q. Have you observed the bridge across the Chehalis river at Aberdeen?

A. Yes sir I was down there this morning.

Q. Have you observed the position of the "G" street dock or wharf?

A. Yes sir.

Q. Did you take notice of the position of the mouth of the Wishkah river relative to that wharf and the bridge?

A. Yes sir.

Q. Are you acquainted with the steamer Norwood?

A. No sir.

Q. You never have seen her?

A. No sir.

Q. Assuming that she is a wooden steam vessel of about 210 feet in length, over all, and 48-6 foot beam and about 15 feet in depth, and that she blew her whistle to open that bridge at 392 or about the time she threw off her lines for passage through the bridge, that in passing from the "G" street wharf toward the bridge she moved under slow bell until she got out or just above the mouth of the Wishkah river and that at that point the captain of the vessel observed that the bridge was not answering his signal by opening and that at that point near the mouth of the Wishkah river he repeated his whistle to open the bridge; that following the second whistle the bridge began to open and the vessel began to move in the direction of the bridge and toward the opening on the north side of the bridge next to Aberdeen proper; that after he had gone about half the distance from the Wishkah river to the bridge or within about 300 feet of the resting pier of the west side of the bridge, the bridge closed and a signal was displayed of the size of—

Mr. HOGAN: I don't suppose the size would have any bearing.

Mr. CROSS:

Q. Such as the one I hand you and that flag at or about the time that the bridge closed back was waved violently from the bridge in the direction of the oncoming boat, what as a master mariner would that indicate to the captain of the vessel?

A. What would it indicate?

Q. Yes.

A. It is a danger signal that there is something wrong.

Q. If at that point and at that time the captain of the vessel backed his vessel full speed, what would be the natural direction or course the vessel would take assuming that the tides and the winds are strong and blowing or going in the same direction as the vessel and in the direction of the bridge?

A. If he backed his ship at once she would turn, she would swing towards the bridge.

Q. How far would that vessel drift notwithstanding his reversed engines?

393 Q. It depends upon the wind and the tide.

Q. Assuming there was a strong wind and tide in the same direction towards the bridge?

— It is impossible for him to keep clear of the bridge at that rate, by turning the ship around to the starboard he would still be carried towards the bridge assuming it is only three hundred feet.

Q. Did you observe the distance between the south rest of the bridge and the north shore there?

A. Yes sir.

Q. State whether or not a vessel *if* of that capacity could regulate her movements if she was placed cross-wise with the wind and current?

A. It is an utter impossibility, sir.

Q. Could that vessel have backed out clear of the bridge?

A. She had the wind and current to contend with she had either to go forward or backward.

Q. Now if at that point after the vessel had swung across the current the captain of the vessel should give direction full speed ahead so that the vessel in her forward movement before she had reached the rest, had passed the rest, what would you say as to that movement as being good seamanship?

A. I would not think it was at all good seamanship, the only thing he could do was to let go of his anchor and steam ahead, to keep clear of the bridge, that is, anchor down to keep his bow up against the movements of the wind and the current.

Q. Which anchor should he have dropped?

A. Either one, the starboard anchor if it was ready.

Q. If he dropped his starboard anchor immediately opposite the south opening of the bridge on the south side which he intended to go through, the one he intended to go through.

A. Yes sir.

Q. If he dropped his anchor at the opening on the south side across the stream, was it good seamanship to continue his vessel across the stream, after she passed this pier, then drop his anchor?

A. It would be good seamanship because the anchor was keeping the bow with the stream and steam ahead, the anchor was for a contingency to hold him up stream.

Q. Now if he, after he dropped his anchor and the stern of the vessel had passed this bridge rest, he should reverse his engines and swinging his vessel sternwise through the south opening, would that be good seamanship?

A. So she cleared that middle pier and she was lying to the southward, the current abroad side?

Q. Now in order to locate yourself here is the "G" street dock and here is where your vessel is in the Wishkah river, here is the bridge (referring to Plaintiff's Exhibit 4).

A. As soon as the stern cleared there it would be good seamanship for to steam ahead clear of the other one.

Q. What other, if any alternative was open to the vessel after that under those conditions, as you see they are there what else could he have done?

A. He could have run his ship ashore and stand chances of damaging his vessel but it would have been poor judgment on his part, the first thing is to save his ship, it might have done great damage to his ship, by running his vessel ashore.

Q. Would putting his vessel ashore have kept him from
395 running into the bridge?

A. No I don't think so.

Q. Taking everything into consideration and the wind and current against her, would it have been good seamanship for him to have run his vessel there ashore under those conditions?

A. No certainly not sir.

Q. Assuming that the vessel is of the length that I have stated and she at that time is empty and that she draw- about eight foot at the bow and about fourteen feet aft, and that her bow was lifted about thirty feet above the surface of the water and that the wind was blowing strongly and with a strong current against him state whether or not under those conditions it was or would be practicable or possible for him to have turned his vessel against the current and headed down stream?

A. No sir he could not do it sir.

Q. State captain, speaking in the capacity of handling a vessel, whether or not any one ten years handling a particular vessel can state within any degree of approximation just what that vessel will do?

A. No sir it is not a possibility.

Q. You have to know your ship- before you can handle them don't you?

A. Yes you have to know your ship just as one would his horse. The ship I am on now, there is something about it, you have to know them before you can handle them, you have to know them just as you do your horse.

Q. Then can you judge what you can or *am* not able to do?

A. You have to be very well acquainted about it you have to do it and do it at the right time, the right thing.

Q. Now assuming that the captain made good and let go of his anchor at the time and place we have indicated and that the
396 vessel was driven hard astern with the tide and wind as we have indicated and that when passing sternwise through that opening the vessel collided with the superstructure or structure of the bridge and sterred on through the south side, state whether or not the fact of such a collision would indicate good or bad seamanship?

A. He was backing astern to go through the opening in the bridge?

Q. Yes sir.

A. If he saw that was clear and could maneuver the ship as he

thought probably he could go through, if he collided with the superstructure under the circumstances he was exercising good seamanship.

Q. Would it be in such a condition that he could manage her swing or prevent her from going side ways, would the fact that she did swing in against the superstructure or bridge, would that indicate bad seamanship?

A. No sir, I don't say that.

Q. Is it a common occurrence in striking bridges in passing through?

A. Yes sir a very general thing. Most bridges have fifty or sixty feet of dolphins to the bridge at the entrance and if you see you are not going to get through entirely you can operate and keep your vessel away from the bridge.

Q. Is that an usual condition?

A. Yes sir a good many of these bridges all over the world.

Q. State whether or not the colliding of the vessel with the bridge was one of the natural results and accidents under the condition she was in?

A. It was no slur upon the master in any manner.

Q. Assuming that in colliding with this bridge Captain, the effect of the collision was to break the superstructure or upper part of the siding on the house which is simply flooring in between the stanchions, not breaking it out but breaking it in the ends so that it was setting together and no other and further damage appeared?

397 Q. To have been made to the vessel at the time, state whether or not that would indicate what kind of a collision that would indicate?

A. I should think that a blow like that would effect the boat before it would break or damage the bridge. I should think it would have taken a hard blow in case the bridge was properly constructed.

Q. If a blow like that would knock it down what would that indicate?

A. I am inclined to think that I would pay the captain for knocking it down and if this bridge was knocked down by that kind of a blow I think there was certainly something the matter with the construction of the bridge. I certainly think so.

Cross-examination by Mr. HOGAN:

Q. If on the other hand Captain this blow that the pier was struck was sufficient to sway the top of the pier and the bridge two or three or five feet out of plumb?

A. I should think that part of the bridge was rotten, my

Redirect examination by Mr. CROSS:

Q. Captain state whether or not when a vessel of this character strikes a stationary body with any degree of force the effect of the stroke is noticeable on board the ship?

A. Yes sir it would be.

Q. Is it noticeable in the engine rooms?

A. Yes sir.

Q. Now in the making of this stroke or collision if no perceptible jar such as to attract the attention of the men in the engine room what would that indicate?

A. It is the first place noticed, if the ship runs against any structure or anything it is the first place they notice it, in the engine room. Sometimes my boat has run on bottom and it is noticed in the engine room first and not on the deck, that is a fact.

398 Recross-examination by Mr. HOGAN:

Q. Suppose the vessel struck the round pier instead of the house striking the end of the sharp cross beam on the pier, that would not be noticed, I mean that it would not leave any perceptible mark?

A. It is bound to make a mark on my iron ship.

Q. Bound to leave a mark?

A. Yes sir.

Q. What kind of a mark?

A. It depends upon the force of the blow.

Q. Is there a guard rail on your steamer?

A. A guard rail?

Q. Yes.

A. What do you call a guard rail?

A. A round rail above the water lines?

A. No sir.

Q. There is no such rail?

A. No sir.

Q. I understand you to say the proper move to be for the master was, when he was getting close upon the bridge, to drop his anchor, and it would not be good seamanship to steer clear around?

A. He could not—it would not be good seamanship to immediately drop his anchor, he should steam forward and drive his vessel so as to keep his bow up the stream, and get his boat clear of the bridge.

Q. That would be a proper move?

A. Yes as I understand he did make that move, so as to clear the stern of the vessel of the abutment.

399 Mr. Cross: I don't know whether I understand the witness or the witness don't understand the situation.

Q. Now when the vessel was coming toward the north opening and got up within two or three hundred feet of the rest the question is whether or not after he had ported his helm and gotten her across the stream that if it was good seamanship to go through the south opening?

A. I understand that the man dropped his anchor here and kept his bow up stream this way and steamed ahead toward this part of the bridge and after that he went astern through the bridge.

Q. You mean by this part of the opening, when you say cleared this part of the bridge you mean the middle of the bridge?

A. Yes the middle of the bridge.

Q. The question in cross-examination is this as I understand it if

upon seeing the flag, it *it* would have been good seamanship if he had dropped the anchor at the time he saw the flag?

A. I understand, if he had dropped his anchor the stern could have swung around and knocked the bridge down.

Mr. HOGAN: You think a proper move when he cleared this was then to drop his anchor and go *atsern* full speed?

A. Yes sir.

Q. Might not it have parted the chain if he had started ahead?

A. He should steam ahead, or the ship would perhaps might have had sufficient head way to have cleared it even if he did not steam ahead.

R. B. HARRISON being duly sworn on behalf of defendants testified as follows:

Direct examination by Mr. Cross:

Q. Give your name Mr. Harrison?

A. R. B. Harrison.

400 Q. Where do you live?

A. Aberdeen.

Q. What is your business?

A. Steamboating, engineer.

Q. What waters do you operate on?

A. Grays Harbor and its tributaries.

Q. The rivers connected with the harbor?

A. Yes sir and rivers connected with the harbor.

Q. Are you acquainted with the bridge in this action, involved in this action?

A. Yes sir.

Q. Do you know when it was constructed originally that is do you know of the fact whether—do you know when it was built?

A. Yes I was here all the time they were building it.

Q. Have you observed its operation ever since it was constructed?

A. Yes sir.

Q. Have you had occasion to go through this bridge during this time?

A. We go through there every day two or three times a day.

Q. What boat are you operating on?

A. The Fleetwood.

Q. In what is the Fleetwood engaged?

A. In towing logs, rafts and so forth and schooners.

Q. Do you know which of the piers went out along in May last?

A. Yes sir.

Q. Since its construction and prior to the time that this piers went out have you ever observed collisions with these piers by rafts of logs?

401 A. I have seen rafts hang up there and you can hardly get through there without hitting them, the rafts are so wide you can hardly get through there, the rafts that went through this opening would hit these piers?

Q. The rafts that went through the south opening would hit those piers?

A. Yes sir.

Q. About how many rafts have you any idea approximately about how many rafts would go through this daily weekly and monthly?

A. We have been towing through there three or four a day lately.

Q. Would it average as much as one a day or two a day?

A. Yes I should think two a day any way.

Q. About how many feet of logs in an ordinary raft?

A. I don't know how many feet there is in a raft or how many logs there is.

Q. Well I don't ask you to state to a foot or to a thousand feet but in a general way from your experience in towing logs?

A. I could not say how many feet there is in one.

Q. You say that the rafts are so large that they can not get through the opening in this bridge between the draw span and the other piers ordinarily without colliding with it?

A. There are different sizes in rafts.

Q. Which side would the rafts hit if they hit either side?

A. They most regularly hit the piers on the other side.

Q. The piers that went down.

A. Yes sir.

Q. Does the current set over towards these piers?

A. Over towards them, yes.

Q. Is that by reason of the form of the construction of the center pier the way it is built?

A. Yes it divides the water.

Q. What shape is the center pier or rest?

A. "b" shape.

Q. Now you say the day the collision, you remember the date, of collision of the Norwood with the Chehalis river bridge?

A. Yes sir.

Q. Did you go through this bridge on this day?

A. We went through about between ten and eleven o'clock.

Q. Which side of the opening did you go on?

A. We went on the north side. We got some boom sticks there in the mill and took them through.

Q. Do you know how the bridge was opened that morning as you went through?

A. It was opened by hand.

Q. Have you observed the opening of the bridge in the opening closing from time to time?

A. I have.

Q. State whether or not there is a stop or dead center for that large when it comes completely open?

A. There is not any.

Q. Have you observed whether or not it will continue on past the dead center rest? In opening?

A. It has done it and came near catching our vessel that way.

Q. Caught your vessel?

A. Yes sir. We were going through and they kept right on going.

and came near heading us off and hitting us they did that once or twice.

Q. At this times you refer to how nearly was the bridge closed in the opposite direction when it went out and you sheered off quite a bit to miss it?

A. I could not say exactly.

Q. Was it as much as $\frac{1}{2}$ or $\frac{2}{3}$ or $\frac{3}{4}$?

403 A. $\frac{1}{2}$ anyways I think so nearly a half.

Q. Do you know whether or not that bridge can be revolved clear around?

A. There is nothing to hinder it that I know of.

Mr. HOGAN: State what you know Mr. Harrison.

A. It would seem to me that they could open it clear around for I have seen it go past the center.

Q. How nearly have you seen it close in an opposite direction how near have you seen it come from making a complete half circle?

A. It would be about the same as I said before it would *like* about two-thirds of making—or coming in its ordinary shape again.

Q. Have your vessel ever collided with the end of the bridge?

A. It has but I was not on at the time.

Q. Was the bridge partially open at that time?

A. Yes sir.

Mr. HOGAN: He was not there.

Mr. CROSS:

Q. You have talked to Mr. West about it?

A. I asked him for damages, if he would give us any damages, and he said he would not pay us anything at all.

Q. In that discussion was the action of the bridge talked about?

A. Yes sir.

Q. Was that stopped after the bridge past this center or opening? Did they do so in opening that day?

A. In opening?

Q. Yes sir.

Mr. HOGAN: We object to his testimony he was not there.

Q. Have you ever known that bridge to commence to open and close back.

A. No I don't think so.

404 Q. Were there any dolphins at the end of these piers that went down? When the piers were first constructed?

A. There were some.

Q. Driven there in the first place?

A. I suppose they were knocked out by rafts I suppose there was none there at all at the time of the accident.

Q. How long had these dolphins been out?

A. Two months I suppose I should judge.

Q. You say that they stayed there for two months after they were put there?

A. No they had been out that long before the accident any way, I should judge.

Cross-examination by Mr. HOGAN:

Q. You are interested in the ferry there are you not?

A. Yes sir.

Q. That is north the south approach, the ferry that runs there from Aberdeen proper to South Aberdeen?

A. Yes sir.

Q. And carries the same traffic as the bridge the bridge and your-
f are competitors in the business are you not?

A. Yes sir.

Captain JOHN I. MARTIN recalled.

Direct examination by Mr. CROSS:

Q. I would ask you captain whether or not at the time that you loaded your vessel at the lumber company's dock above the bridge you knew that the collision of the vessel with the bridge had effected the bridge itself?

A. No sir I didn't.

Q. How long after that was it that you knew that it had affected the bridge?

A. I knew that in the evening after it fell down my attention was called to it I came from supper at 5:30, the bridge had fallen down a little before that one end of it fell down.

Plaintiff's Rebuttal.

JONATHAN WILSON, being duly sworn in rebuttal in behalf of plaintiff testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name and residence?

A. J. H. Wilson, Aberdeen.

Q. Where were you on the 7th of May, last?

A. I was on the dock of Wilson's Brothers mill company.

Q. You are the son of C. R. Wilson aren't you?

A. Yes sir.

Q. What part of the dock were you on?

A. I was on the western end.

Q. Did you see the bridge open for the Norwood that day?

Mr. CROSS: We object your honor to any further testimony on that line they have had their day and time and introduced testimony along that line until the court indicated that it would hear more and they are going over the same thing again.

Court: You may answer that question Mr. Wilson.

A. I seen it while it was swinging.

Q. Which way did it open?

Mr. CROSS: We object your honor.

Mr. HOGAN: Even if they were true, the court ought to let the testimony in in view of the difference that has been made that the bridge finally opened the other way.

Mr. BRINKER: You are to remember that when the court suggested that enough witnesses had been called by plaintiff on that question you at that time said to the court what the difference would be—that that bridge had opened the other way and that for
406 that reason you wanted to put on additional testimony at that time.

Mr. HOGAN: It is a matter that the court should determine. This is a witness that was with Patterson on that same place.

COURT: It is only a question as to whether or not I should have stopped where I did in view that it was becoming such cumulative testimony. Of course at the time I made that suggestion I had no idea that there was going to be any dispute as to the way the bridge was opened, of course the counsel suggested that there was going to be one. In view of this fact I think I will let you go on.

Mr. CROSS: A half a moment please the court. I can see where we are liable to land. We ask permission at this time please the court to amend our answer so as to allege the giving of this signal at or about the time of the closing back of the bridge so as to conform with the proof in that regard. We ask to amend our answer so as to show in effect that immediately upon the closing back of the bridge a signal was given on the bridge by those in charge of the bridge by waving a red flag and that by reason of the closing of the bridge and by reason of the waving of the flag that he changed his course. We will formulate the amendment so that it can go into the record at this time, we wish to indicate the substance of the amendment proposed.

Mr. HOGAN: I suppose the amendment is on line with the evidence being introduced and having been introduced.

COURT: If you have no allegation in your answer in regard to the signal, have you no allegation in regard to the signal?

Mr. CROSS: No sir we have not.

COURT: You may make that amendment.

Mr. HOGAN:

Q. Which way did the bridge open?

407 A. The south end opened west the north end south up stream.

Q. The north and south up stream?

A. Yes sir.

Q. Did you see Patterson that day the Tallyman that day?

A. I seen Patterson about the time the steamer struck the bridge.

Q. Now did you see him climb up on the pile of lumber that day?

A. Well he and I climbed up together about the same time.

Q. That was when?

A. That was—we just got on top of the pile in time to see the bridge totter.

Q. You had not been on the bridge, I mean on the pile before?

A. No sir.

Q. Did you see the bridge open at that time?

A. Yes sir.

Q. How much did she open at that time?

A. Four or five feet.

Q. Did she swing back again when the pressure relieved?

A. No sir.

Cross-examination by Mr. Cross:

Q. Did you hear the Norwood whistle the first instance?

A. I only heard it whistle once.

Q. You only heard it once?

A. Yes sir.

Q. Where was you then?

A. I was on the western end of the dock.

Q. Now referring to plaintiff's exhibit "4" Mr. Wilson did you recognize the situation there, this is the bridge and this is Wilson's mill, this is the Bryden & Leitch mill company and this is the "G" street dock and etc., do you recognize the position there?

408 This is your wharf indicated here on plaintiff's exhibit "4" or Wilson Bros. Mill Co., is it?

A. This is the dock in there.

Q. Now then indicate by figure "1" on this chart or this exhibit just where you were Mr. Wilson.

A. (Indicates with Figure "1" on plaintiff's Exhibit "4.")

Q. Where were you and Mr. Patterson when you got up on the lumber pile? Indicate that by *by* the letter or figure "2" will you?

A. (Witness indicates by figure "2" on plaintiffs' exhibit "4.")

Q. Could you see the Norwood from where you were when she whistled the first time?

A. I could just see the mast tops.

Q. Then at that time you were at figure "2" were you?

A. Yes sir.

Q. What were you doing there?

A. I was working on an order for a steamer that was due, a steamer that was due there.

Q. Were you looking for a steamer?

A. Yes sir.

Q. What was her name?

A. South Bay.

Q. Where had Mr. Patterson been at work prior to this time?

A. He was on that portion of the dock where figure "2" is.

Q. After the whistle how long did you remain at figure "1"?

A. I walked there from "1" to "2."

Q. How many feet is it from figure "1" to figure "2"?

A. It must be three hundred and twenty-five feet.

Q. Now as to what Mr. Patterson had been doing while you were at "1" or while you were walking from "1" to "2" you don't know?

Q. When you got to figure "2" you say you observed the vessel?

409 A. Yes sir.

Q. Where were you when the bridge opened?

A. I was at figure "1." When I first noticed the bridge swinging.

Q. At figure "1"?

A. Yes sir.

Q. You say when you first noticed it swinging you were at figure "1" and the north and was going up stream?

A. Yes sir.

Q. Were you looking at Patterson while you were going down there?

A. No sir.

Q. What were you looking at?

A. Ahead of me.

Q. In the direction of Patterson?

A. Yes sir.

Q. As to whether or not that bridge closed back while you were walking down to Patterson you don't know?

A. It didn't close back I am certain of that.

Q. How do you know?

A. It was swinging when I left figure "1" and it kept on swinging until—when I got at figure "2" it got open and the steamer struck the pier.

Q. Then the steamer had struck the pier when you got to Patterson? While you had walked from "1" to "2" it had backed in and struck the pier?

A. Yes sir.

Q. While you were going from "1" to the other figure or figure "2" it had backed in and the collision occurred?

A. Yes sir.

Q. What were you doing when the collision occurred?

410 A. Looking towards the vessel.

Q. Were you looking towards the vessel you and Patterson both?

A. Yes sir.

Q. You state you had been up on the pile of lumber there?

A. Not previous to that.

Q. Not previous to that?

A. No.

Q. When was it when did you get upon it?

A. Just about the time that the vessel struck the pier we got on the pile in time to see the bridge totter.

Q. You were looking towards the vessel were you?

A. Yes sir.

Q. And Patterson was looking towards the vessel?

A. Yes sir.

Q. So that at the time the vessel struck against the pier you and Patterson were standing on the lumber pile?

A. Yes sir. We just got on the pile in time to see the bridge totter.

Q. Do you know whether or not Patterson had not got on the lumber pile before you got there?

A. No I could not say.

Q. You don't know about that?

A. No.

Q. Now you walked down what rate, in an ordinary way, an ordinary gait?

A. Yes sir a pretty fair gait.

Q. And while you got to the figure "2" the bridge had come to a standstill as you remember it? Or did *you* come to a standstill before you got there?

411 A. Just about the time that we got there.

Q. You say it struck the pier or could you tell whether it hit the pier or what? You say when it struck the pier you mean it struck the bridge don't you? You don't know what portion of the bridge it struck?

A. No sir.

Q. Did you see the vessel back in? Back through the draw, through the south opening?

A. Yes sir.

Q. Was the vessel moving slowly or rapidly while it was backing in?

A. While it was backing into this opening?

Q. Yes while it was backing into the south opening, yes?

A. Why it moved along with the tide.

Q. It was not under its own power it was simply just drifting with the tide?

A. Yes sir.

Q. Did you notice whether or not the bridge came to a stand still when it got over the rest, did it swing on past the rest?

A. It came to a stand still and swung back the same way it opened.

Q. Did it commence to swing back the same way that it opened?

A. Yes sir.

Q. How long had the vessel gone through?

A. I could not say exactly ten or fifteen minutes.

Q. Ten or fifteen minutes after the vessel had gone through?

A. Yes sir.

Q. Do you think you stood out there ten or fifteen minutes?

A. Yes all of that time.

Q. And your remembrance is that the bridge began to open about the time that you moved from figure "1" or just about the time?

A. Yes sir.

412 Q. Then you think that it continued and opened until you got to figure "2"?

A. Yes sir.

Q. And that while you were going over from figure "1" to figure "2" the vessel backed in?

A. No.

Q. Didn't you say that she was in the south opening when you got to figure "2" or about that time?

A. Well she was not quite in the opening you see she was further to the south and on account—she was broad side kind of broad side you could not hardly say she was in the opening.

Q. I thought you said she collided with the bridge about the time you got up to figure "2"?

A. Yes sir.

Q. Do you know what part of the vessel collided with the bridge?

A. Yes sir.

Q. What part of her?

A. She collided about midships.

Q. Did you see her when she started to back?

A. When she started to back from on through the draw?

Q. Yes.

A. She swung around and drifted through.

Q. Did you see her when she turned her stern into the opening?

A. Yes sir.

Q. Where were you when that occurred?

A. Down on the dock.

Q. Now did this occur while you were going from figure "1" to figure "2"?

A. The steamer backed through?

Q. Yes.

A. No sir.

413 Q. When did she change her course, and start in through that opening where were you then?

A. I didn't see her change her course I was standing so I could not see her.

Q. So you could not even tell when her stern had swung in there?

A. No I did not.

Q. Do you remember is that about the time that the bridge stopped that she collided with the bridge?

A. Yes sir.

A. J. WEST recalled.

Redirect examination by Mr. HOGAN:

Q. You have heard the testimony here that the only part of the bridge which came in contact with the vessel was the projecting edge of some timbers over the edge of the pier and that came in contact with the cabin or house on the vessel?

A. Yes sir.

Q. What do you know to the contrary if anything?

A. I can't say I don't know anything, I was not there.

Q. What from your observations of the bridge afterwards?

A. I can illustrate the conditions that existed when I got there.

COURT: Proceed.

Q. There is this paper a sketch of the pier showing the portion of the pier that extends into the water from the eye beam out in the opening of the channel of the river. This eye beam is 20 inches deep, one-half inch wide and six inches across here. Q. What material?

A. Steel. There is one piece twenty one or thirty four, I mean, inches long of the same material. At the time I crossed the river to see the condition of things, I found——

414 Mr. CROSS: Defendant- object to this testimony as it is not a part of the res gestæ and can't tell what the conditions might have been at the time.

COURT: Proceed.

A. I found at looking at the end of this "eye" beam instead of— in looking from the west end it appeared as shown here in figure "2" which would indicate that this pier had been struck by some force and driven back. The blow had driven it back, the pier back here and bent all of this to an upright position to about six inches of the plumb, it is supposed to be about eighteen inches across here. That would show that the pier had been struck and not the eye beam, while the boat might later come in contact with something else. This eye beam can be seen at any time. This is conclusive evidence that the weight of the boat—

Mr. CROSS: We object to that and any conclusion.

Mr. HOGAN: Let the court make its own conclusions. We offer this in evidence as plaintiff's exhibit "9."

Q. Explain to the court as to the dolphins there Mr. West, that has been testified to by witnesses for the defense?

A. Yes, witness for the defendant- said there were no dolphins there. When Mr. Fields came to put in those piers, he put two or three or four piles and drove them and the rafts of logs came and knocked them down, I told him the best thing was to—

Mr. CROSS: We object to any conversation.

Q. What if any directions did you give about replacing them?

A. I directed him to have dolphins driven there and later on the engineer came down and Major Millis—

Mr. CROSS: We object to any conversation of Major Millis or anybody else.

415 A. Mr. Carpenter told me and I made application to have those dolphins left there.

Q. So that no dolphins were contemplated in the original plans?

A. No sir.

ORIE KNAPP being duly sworn in rebuttal on behalf of defendants testified as follows:

Direct examination by Mr. HOGAN:

Q. State you- name and residence.

A. Orie Knapp, and I live in Aberdeen Washington.

Q. Did you see the accident to the West bridge across the Chehalis river?

A. Yes sir.

Q. On the 7th of May last with the steamer Norwood?

A. Yes sir.

Q. Where were you at the time?

A. On the street car, motorman.

Q. On which side of the bridge?

A. I should say I was on the—on this side of the bridge.

Q. Aberdeen side?

A. Yes sir.

Q. Did you see the boys relative to the jacks of the bridge?

A. Yes sir.

Q. Did you see the bridge when it commenced to open?

A. Yes sir.

COURT: I don't feel as though you should be allowed to go on in rebuttal and introduce testimony that has already been gone over by the other witnesses as to the circumstances that occurred in that regard, you suggested that your testimony was becoming cumulative and that you had more witnesses on the same point. In view of my former ruling, I think that under those circumstances, that those witnesses would so testify if they were put on the stand, they should not be allowed to testify.

416 I consider that those witnesses that you were calling, were to be called for that purpose, and that they would have so testified in the beginning.

MR. HOGAN: While we have got about six witnesses here today, I think of course they are along that line, I will save an exception to the ruling of the court, you will be excused Mr. Knapp.

J. B. SHELLEY recalled in rebuttal on behalf of plaintiff, testified as follows:

Q. You are the same Mr. Shelley that was on the stand here the other day aren't you?

A. Yes sir.

Q. Do you know John Graham, a witness that appeared for the defense in this case?

A. I know the John Graham of South Aberdeen.

Q. Did you see him on the day of the accident?

A. Yes sir just after the accident.

Q. Where was he going or where was he coming from?

A. He came off of the bridge. Down towards the railroad track.

Q. I will ask you what his condition was as to sobriety at that time?

A. I thought he was drunk. The railroad track was not quite wide enough for him for he staggered back and forth.

Q. State whether or not he gets intoxicated frequently?

A. Yes he is in the habit of gettin- drunk about every time he goes to town.

Q. Did you ever see any of the crew after the accident?

A. After the accident, no.

Q. Did you see any of them before the accident?

A. I saw the steward before the accident.

Q. How long before?

A. It must have been a couple of hours I should judge.

417 Q. About two hours?

A. Yes sir.

Q. What place?

A. He was in our store on the north side I went to get some articles to take to the south side.

Mr. CROSS: We object what would the steward have to do with it?

COURT: Objection is sustained.

Mr. HOGAN: The captain testified that none of his men had been drinking.

Q. Did you have any conversation with the steward as to whether they were drinking on board?

Mr. CROSS: We object your honor.

COURT: Objection is sustained.

Mr. HOGAN: I offer to show by the examination of the witness that the steward stated that they were drinking on board and that he was drinking himself.

Mr. CROSS: A drunken steward cannot go and tell stories that can bind the defendant.

Mr. GEORGE SHRIVER a witness duly sworn on behalf of plaintiff in rebuttal testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name and residence.

A. George Shriver Aberdeen.

Q. What is your business?

A. Section foreman.

Q. Where do you live?

A. Aberdeen, South Aberdeen.

Q. How long have you lived there?

A. Three years or a little over.

118 Q. Do you know John Graham?

A. Yes sir.

Q. The fellow who appeared as witness in this case?

A. Yes sir.

Q. Do you remember the accident of the Norwood, and where were you the day of the accident of the Norwood with the West bridge across the Chehalis river?

A. I was working between the Leitch mill and the bridge on the railroad track.

Q. Did you see Graham that day after the accident?

A. Yes sir.

Q. Where did you see him?

A. He came down off the bridge.

Q. Did you notice what his condition was as to sobriety?

A. Yes sir.

Q. How was he carrying himself?

A. He came down there and talked about the bridge and was pretty full, intoxicated.

Cross-examination by Mr. Cross:

Q. Where were you?

A. Me?

Q. Yes.

A. I was working there.

Q. On the bridge?

A. No on the railroad track this side of the bridge.

Q. That is west of the bridge?

A. I guess so.

Q. When you say he was full what do you mean by that?

A. I mean drunk.

419 Q. What do you call drunk?

A. Well a man is drunk I guess when he can hardly talk or walk.

Q. He was telling you what had happened?

A. I knew what happened.

Q. He was talking?

A. Yes sir.

Q. He was telling you what he saw?

A. No not particularly.

Q. What he did?

A. What he did, no he didn't tell me what he did.

Q. Was neither telling you what he saw or what he did?

A. No not particularly, he said it was too bad.

Q. He was telling you it was too bad?

A. Yes, that was about it.

Q. You say he was drinking or drunk by the way he talked?

A. No his actions.

Q. Did he undertake to tell you how it occurred?

A. No he didn't.

G. G. SMITH being duly sworn on behalf of plaintiff in rebut testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name.

A. G. G. Smith.

Q. What is your place of residence?

A. Cosmopolis, Washington.

Q. What is your occupation at the present time?

A. Feeding planter.

Q. How long have you been working at that?

A. Since the first of June.

Q. What were you doing on the 7th of May, last?

420 A. The 7th of May.

Q. Yes.

A. That was about the time I was on the boat?

Q. What boat?

A. The Norwood.

Q. Were you on board the Norwood the day of the accident?

A. Yes sir.

Q. Were you working on board?

A. Yes sir.

Q. In what capacity were you working?

A. I was working as a waiter.

Q. How long had you been working on the Norwood?

A. I don't remember just how long it was I went from there to San Pedro and back again.

Q. Shipped from Aberdeen to San Pedro and back?

A. Yes sir.

Q. Do you remember the occasion of the vessel leaving San Pedro?

A. I remember of leaving there that is all.

Q. Do you know whether any liquor was taken aboard the ship there?

A. Yes there was liquor taken aboard.

Q. How much?

A. I don't know just how much.

Q. What kind of liquor?

A. Whiskey and also beer.

Q. Could you estimate or have you any idea how much?

A. Well no I don't know I could not say exactly how much no.

Q. How many gallons of whiskey or how much whiskey?

Mr. Cross: We object he is assuming.

Q. Could you give any idea?

421 A. Three or four gallons or something like that.

Q. What kind of liquor was that?

A. Whiskey.

Q. How much beer?

A. I could not say.

Q. How many cases?

A. About a dozen bottles.

Q. While aboard did you notice any officers on board under the influence of liquor?

Mr. Cross: I don't think you should—

Q. I will ask you how long it takes to make the run?

A. I don't remember how long it was coming up, about four days I think.

Q. I will ask you the question that if during that time you saw any of the officers drinking during that trip?

Mr. Cross: We object your honor it must be related to that particular officer.

Mr. HOGAN: It is a matter of the court's.

Court: Sustain the objection, you must confine it to this morning of this day.

Mr. Cross: There is another matter please the court in their pleadings they plead negligence and not drunkenness.

Court: That is my ruling.

Mr. HOGAN: Exception.

Q. I will ask you if you saw Captain Martin drinking on that voyage?

Mr. CROSS: It must be confined to this particular day.

A. This day or the night before I saw him drinking some time I could not say as to the day or where it was.

Q. Did you notice any of the officers in port under the influence of liquor on this day?

422 A. I could not say as I did.

Q. What is your recollection in that regard?

A. I don't recall of seeing any one drinking on that day.

Q. Were there any women on board?

A. Yes sir.

Q. Did you see any of these women afterwards to know what character of women they were?

Mr. CROSS: We object your honor it is immaterial it has nothing to do with the navigation of the vessel.

COURT: Objection is sustained.

Mr. HOGAN: I offer to show by the witness that there was several women aboard and afterwards went into the dance hall in Aberdeen and that these women were drinking with the officers of the ship.

COURT: Objection is sustained.

Captain R. E. PEASLEY being duly sworn on behalf of plaintiff in rebuttal testified as follows:

Direct examination by Mr. HOGAN:

Q. State you- name and business Captain?

A. R. E. Peasley.

Q. What is your business?

A. No business just at present.

Q. What has been your business in recent years?

A. Master of sail vessels for the last ten years or so.

Q. On what waters?

A. Pacific Ocean.

Q. During that time have you had occasion to run into Grays Harbor?

A. Yes sir.

Q. How long have you had a master's license?

A. My license dates six years old, that is my license.

423 Q. When did you quit the sea, have you quit it?

A. Last day of July, sir.

Q. This year?

A. Yes sir.

Q. Are you acquainted with the steamer Norwood and that type of steam schooners?

A. I have seen several of that type of vessels.

Q. Are you familiar with the character of the banks of the Chehalis river, in the vicinity of the West bridge along in general on the harbor shore?

A. Only in a general way.

Q. It is in evidence that this here is what is known as mud banks?

A. Yes sir.

Q. Do you know what effect it has on a vessel to run her bow on
 ud or run her ashore on mud?

A. If she runs hard enough she will stay there.

Q. What if anything in running, would happen if the bow of the
 vessel run onto the mud flats?

Mr. CROSS: We object your honor, it is not proper and *and* is in-
 competent, they went into that matter in chief, they attempted to
 charge us with negligence, to show how and in what way we were
 negligent, many other things, that the captain should have done, he
 could have run the vessel on the mud; now we have attempted to
 meet that evidence that they offered in chief except with different
 witnesses. That was their strong contention in the direct testimony,
 the testimony in chief was that we should have run out over that
 the flat and should have run aground. We have tried to show what
 the effects of such an undertaking would have been; now we think
 that part of the case should be closed.

24 Mr. HOGAN: I think please the court that there is a mat-
 ter of difference in the testimony.

COURT: I think the case—the matter has been gone into by wit-
 nesses for both parties, sustain the objection.

Mr. HOGAN: Exception.

Mr. HOGAN: We have another witness here to testify in relation
 to the velocity of the tides, I think that has been gone into by both
 sides in chief, while on cross examination of their witnesses a num-
 ber of them state, or said it was a strong tide and some said full,
 some strong tide and wind, some stated that it would carry a vessel
 five or six miles an hour, it is to meet that.

JOSEPH F. FULLER, being duly sworn on behalf of plaintiff in re-
 spondent, testified as follows:

Direct examination by Mr. HOGAN:

Q. What are your initials?

A. Joseph F. Fuller.

Q. You are a civil engineer?

A. Yes sir.

Q. Are you acquainted with the waters of Grays Harbor?

A. Yes sir.

Q. Have you ever made any test as to the velocity of the tides of
 that water?

A. Yes sir.

Q. State when and with what?

A. I tested the water of the Wishkah river on the 2nd day of this
 month. At the boom of the, or in range of the boom of the Aber-
 deen Lumber and Shingle Company's mill I scaled this distance and
 found it was between 1150 and 1200 feet, I did this three different
 times and the time of high water on that day was November 22nd,
 I run this distance and found that it ran at the rate of 1123 feet per
 hour that is at high water, three hours before high water at
 11:30 I took it again and found it to be 3190 feet per hour
 and at 12:24 at the rate of 480 feet per hour.

Q. How high a tide was there on that day?

A. Eight foot six tide that day.

Q. Have you the height of the tide on the 7th of May last?

A. The height of the water on May 7th was at 12:19 o'clock.

Q. When was it high water at the bridge?

A. The only calculation you can make is high water at Hoquiam at 12:19.

Q. How long after that would it be high water at the bridge?

A. Not much difference.

Q. About 12:19 would be high water that day?

A. Yes sir.

Q. How high water was there that day?

A. The height of the tide was seven feet and seven inches.

Mr. HOGAN: I will introduce this book it is an official time table.
(Marked Plaintiff's Exhibit 10.)

Cross-examination by Mr. CROSS:

Q. Those tables are only approximate in its calculation, no consideration is given to winds?

A. No sir.

Q. The rapidity of the tides and height of the tides are affected with the winds very materially are they not.

A. The surface of the current is only affected by the wind.

Q. Is height of the tides affected by the winds?

A. Only a stream.

Q. In a river? The tides are affected by the wind in a river?

A. I don't think so.

Q. If there were a strong southwest or northwest wind blowing are not the tides earlier and later as the wind blows?

A. I don't think so.

426 Q. Have you ever had any occasion to make any test at all?

A. I never tested it at this bridge. It is a pretty hard thing to make the world's currents differ that way.

Q. That is something that you conclude upon, an opinion not based upon experiment is that right?

A. I never seen the time of tide different.

E. H. SHELLEY, being duly sworn, on behalf of plaintiff in rebuttal testified as follows:

Direct examination by Mr. HOGAN:

Q. State your name and place of residence and business, Mr. Shelley.

A. My name is E. H. Shelley, residence, Aberdeen, business grocer.

Q. Are you acquainted with the Captain, John I. Martin, of the steamer Norwood?

A. Slightly.

Q. Do you remember the accident of the Norwood with the West bridge across the Chehalis river on the 7th of May last?

A. I do remember it. I don't remember the day.

Q. I will ask you if you saw Captain Martin after going through the bridge and after tying up at the Aberdeen Lumber & Shingle Company's wharf?

A. I did.

Q. Did you have very much of a conversation with him?

A. I didn't have very much I went aboard the boat and met the Captain.

Q. You may state what was said.

Mr. CROSS: We object to any testimony after the accident as happened, it is not part of the *res gestæ*.

COURT: Overruled.

A. I met the captain on the boat and spoke to him of the accident and he didn't make me much answer about it.

427 Q. State what he said.

A. Why he—I don't know as I can give you just exactly what he said, he seemed to be a little bit indefinite about it.

Q. What were his words as near as you can remember them?

A. I might not be able to say just exactly what his words were, the man seemed to be excited I went aboard there to sell him groceries.

Q. Give briefly what you said and what he said in reply?

Mr. CROSS: We object to anything he said or is said except in relation to the bridge.

A. I remember distinctly what I said to him was that he had bad luck and my recollection was that he at least didn't consider it his bad luck.

Q. What did he say?

A. It has been six months ago and I have not thought anything about it. My recollection is now that he didn't give a dam- or something of that kind, kind of an off hand answer probably not thinking about what he did say or caring to give me an answer.

Cross-examination by Mr. CROSS:

Q. You don't pretend to remember his answer at all do you Mr. Shelley?

A. No I don't remember just exactly the answer, it was something like that, I suppose that he was thinking he was talking to somebody that had nothing to do with it.

Q. As you took it he thought he was not under any obligations to tell you what he thought?

A. I don't think he meant anything, just passed it off as anything else.

Q. By way of introduction, in other words, isn't that about the way of it?

A. I was selling goods and he seemed to be exercised, and
428 I thought there was no chance to sell any goods, that was the easiest way that he could be excused, he seemed as if he wanted to be excused, and I guess that was about the easiest way he had of doing it.

Q. That was in other words his way of excusing himself?

A. That is the way I took it.

Respectfully submitted,

J. C. CROSS AND
WM. H. BRINKER,
Att'ys for Appellants.

429 In the Superior Court of Washington in and for Chehalis
County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to said action through their respective attorneys that the deposition of Captoin H. R. Fredreickson, master of the schooner "Phillipine," may be taken before E. E. Shields, a notary public in and for the state of Washington, residing at Aberdeen, at the office of J. C. Cross, in the city of Aberdeen, Chehalis county Washington on the 16th day of May, 1906, commencing at the hour of 3:30 in the afternoon of that day and continuing until the same is completed.

It is further stipulated and agreed that the said deposition may be taken in short hand and transcribed and when so taken on notice or commission according to the statute and rules and practice of the above court.

That the parties hereto waive any and all objections and exceptions to the time and manner of the taking of the said deposition and all other objections saving and reserving the right to object and except to the propounding of any question or questions, or the making of any answer or answers which either of the parties hereto may deem irrelevant and immaterial or improper.

That this stipulation shall be and become full power and authority for the taking of the said deposition and that the said E. E.
430 Shields, notary aforesaid, shall attach this stipulation to and make the same a part of the return of the said deposition.

In witness whereof the parties hereto have signed this stipulation in duplicate this the 14th day of May, 1906.

J. C. CROSS,
Attorney for Defendant.
JOHN C. HOGAN,
Attorney for Plaintiff.

31 In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Certificate and Return.

Be it remembered that on this the 16th day of May, 1906, at the Office of J. C. Cross, in the city of Aberdeen, Chehalis County, Washington at the hour of — of that day, pursuant to the stipulation hereto attached and made a part of this return and certificate, there being present the plaintiff in person and his attorney of record, J. C. Logan, Esq., and the defendants by their attorney, J. C. Cross, there appeared before me Captain H. R. Fredericksen, Master of the schooner Phillipine, a witness produced on behalf of the defendants who being by me first duly sworn to testify to the truth to the whole truth and nothing but the truth in answer to said interrogatories as might be propounded him as such witness, gave testimony as shown by this deposition, and the said deposition was carefully read to the said witness and there subscribed by him in my presence.

In witness whereof I have hereunto set my hand and official seal this the 16th day of May, 1906.

E. E. SHIELDS,

*Notary Public in and for the State of Washington,
Residing at Aberdeen, in said State.*

32 Direct examination of Captain FREDERICKSON by Mr. CROSS:

Q. Will you give us your name, age and place of residence?

A. H. R. Frederickson, I have now resided on the vessel, the schooner Phillipine, but I call San Francisco my home port, I am 27 years old.

Q. What is your business?

A. Marine master.

Q. How long have you been a master of vessels?

A. Nearly seven years.

Q. Master of what class of vessels?

A. Sail vessels.

Q. How long have you been coming to Grays Harbor?

A. I have been coming down here for about sixteen years. As master I have been here the last two years about ten trips, I think, nine or ten.

Q. Are you acquainted with Captain Martin of the schooner Norwood?

A. Yes.

Q. Are you acquainted with the Norwood?

A. I have been on board there several times, otherwise I am not acquainted with the workings of the vessel.

Q. How long have you known Captain Martin?

A. I am not sure but it must be about three or four years.

Q. Were you present in Aberdeen on the 7th day of this month, May?

A. I was in Aberdeen the seventh day of this month.

Q. Did you see Captain Martin and the Norwood on that day?

A. Yes sir.

Q. Where were they when you first saw them?

A. The vessel was lying at the "G" street dock and Captain
433 Martin on board her on the main deck. The vessel I noticed from the other side before coming across.

Q. What was the captain doing when you first observed him?

A. He was engaged in taking measurements of some chain.

Q. About what time of the day was this?

A. It must have been about twenty minutes after eleven o'clock in the forenoon.

Q. Had the vessel unloaded her cargo whatever it was?

A. I am not sure.

— Did you observe them doing any work?

— I did not take any notice of it.

Q. Did you go aboard the vessel that morning?

A. I did.

Q. Who was present aboard the vessel at that time with you?

A. I went aboard with Captain Sarrines, and I met a friend from
San Pedro, who was on board as passenger.

Q. Do you remember his name?

A. I think his name is Swartz. I am not sure. I was also introduced to Captain Martin's wife.

Q. Was there any one else aboard at that time that you know?

A. Captain Wierschuleit was on the main deck with Captain Martin.

Q. How long did you remain on board?

A. I suppose it was ten or fifteen minutes.

Q. Were you present when the vessel left the "G" street dock?

A. I was on the wharf, "G" street wharf.

Q. Did you hear any whistle blown?

A. I heard him blow the whistle to open the bridge when I saw the vessel was off the wharf ten or twelve feet when she blew her whistle and before she ever let go her lines. She had two lines ashore to guide the vessel off the dock and the lines were still fastened when she blew the whistle. I am not positive but heard him give
434 the order to let go the lines and think he blew his whistle at the same time.

Q. Did you know where he was to load?

A. Yes, he was to load at the Aberdeen Lumber & Shingle Company's mill.

Q. Was that the bridge in controversy in this action that he blew his whistle for opening?

A. Yes.

Q. Did you observe whether or not the bridge was closed when he whistled?

A. The bridge was closed when she whistled.

Q. Did you observe the vessel's movement after she left the wharf?

A. Yes.

Q. State whether she moved slowly or rapidly.

A. Very slowly through the stream.

Q. How was she headed?

A. Towards the bridge up stream.

Q. The bridge is across that stream?

A. Across the Chehalis river.

Q. Did you observe the condition of the tide and the winds at this time?

A. A strong flood tide and strong northwesterly or westerly wind.

Q. What was the condition of the tide as to being high or low?

A. I did not observe that. I judge it to have been about half tide. Did not take particular notice.

Q. Speaking of tides, captain, state whether or not these tide tables are always correct?

Mr. HOGAN: Objects as witness is not qualified to answer, also being indefinite.

A. The tide tables are not always correct.

Q. State under what condition if any the tides may vary
435 from the tables.

Mr. HOGAN: Same objection.

A. The tides may vary by freshets or strong winds.

Q. To what extent in hours or minutes may the actual flow of the tides differ from the tables?

Mr. HOGAN: Same objection.

A. Have never observed it.

Q. Did you observe the vessel while she was at or near the bridge?

A. Yes sir, I did, I took particylar notice of it.

Q. Who, if any one, was with you during these observations?

A. Captain Sarrines, Captain Detrick and several more but I do not remember who they were.

Q. Did you hear the vessel give any other signal while on her course towards the bridge?

A. When about half way or thereabouts I heard them blow the same whistle to open the bridge, they gave the same signal.

Q. Do you remember what the signal was?

A. One long and three short whistles.

Q. At what speed was she moving at this time?

A. Moving at slow speed on the way towards the bridge as near as I could see, not more than speed enough to steer the vessel.

Q. From your knowledge of tides and winds and their effects upon vessels could you state about how rapidly the Norwood would have been driven by the tides and wind on the 7th day of May if she was moving towards the bridge.

Mr. HOGAN: Objected on the grounds that the witness has not shown he was in the necessary possession of knowledge to answer the question nor has he shown himself qualified to answer.

A. I do not think any man could judge it exactly without having instruments to measure it with.

436 Q. Approximately.

A. Approximately about six miles an hour, perhaps a little more.

Q. What would be the least rate for the vessel to move of her own movement in order to be under the control of machinery?

A. About one or two miles an hour.

Q. Did you observe the condition of the bridge at the time of the second whistle?

A. Yes, it was closed.

Q. From where you were could you observe the movements of the vessel after making the second whistle?

A. Yes.

Q. State what course she pursued after whistling the second time?

A. She appeared to steer the same course towards the bridge.

Q. For what distance?

A. About half the distance between where she whistled and the bridge, not quite a half.

Q. That was where she whistled but I mean after she whistled the second time?

A. I could not state exactly as I was too far away.

Q. Well, give your opinion state about how far relative to the whole distance from the place of the second whistle to the bridge before she backed her course?

A. Should think about half the distance from there to the bridge.

Q. What change? if any did she then make in her course?

A. She changed her course to starboard.

Q. Did you observe her course when she changed her course?

A. I was looking at her and the bridge and notice the bridge was *was* slow in opening.

Q. Were the parties that were with you taking observations also

A. Yes.

437 Q. Where were you during this time?

A. I was standing at the wharf at the foot of "G" street.

Q. Did you observe whether or not she cast her anchor at any point?

A. I observed her cast her anchor.

Q. What position was the vessel in in the river, when she cast anchor?

A. She was crosswise in the river but perhaps pointed a little downwards.

Q. Downwards would mean from the bridge?

A. Yes sir.

Q. Then what position did the vessel take?

A. She swung around with the stream and turned towards the bridge.

Q. Could you tell from where you were whether or not the bridge was closed when she cast anchor?

A. They had just started to open the bridge when she dropped

anchor but which was done first I could not state. It was about at the same time.

Q. As far as you observed it was at about the same time?

A. Yes the anchor might have gone a little before or the bridge might have opened a little before. I could not state.

Q. Could you tell from where you were which way the bridge opened?

A. Yes sir.

Q. On which side of the draw span was the vessel when she cast her anchor?

A. On the south side. Cannot state if the stern was past the middle of the draw span.

Q. What direction did the south end of the draw span take when it began to open, up stream or down stream?

A. I think up stream. I am not quite sure but think it was up stream. It must have opened up stream, otherwise it would have come into contact with the vessel.

Q. Did you observe any further movement of the vessel?

A. No, at that time I supposed them to be clear of everything and said so.

Mr. HOGAN: Moves to strike out the answer of witness as to what he supposed and said.

Q. Then what did you do, Captain?

A. Went away as I thought it was clear.

Q. Have you ever had any experience with steam vessels, Captain?

A. No, not as an officer.

Q. Have you ever been mate on a steam vessel?

A. No.

Q. Have you ever been engaged on steam vessels?

A. Yes.

Q. For how long a time?

A. That is so long ago I can hardly remember but I think about three or four months.

Q. Speaking of the Norwood, Captain, do you know about how much she draws?

A. When loaded she draws about nineteen feet and when without ballast or empty I do not know.

Q. How was she at the time she left the "G" street wharf?

A. She was light, I think without ballast empty.

Q. State whether or not there is any difference in the ability to handle a vessel by the master when loaded or when unloaded?

Mr. HOGAN: Objects as too indefinite and the witness has not shown himself qualified to answer, in vessels like the Norwood.

Q. When a vessel is loaded she is easier to handle, especially in strong winds, easier to handle when loaded than empty.

Q. What about the tide?

A. I do not think the tide would effect it as they are usually trimmed so that you can generally handle them as well empty as loaded.

Q. Have you been over the course that the Norwood took on the 7th of May, when you observed her?

A. I have gone across several times on the ferry boat.

Q. Have you taken observations as to the conditions surrounding the place where she threw out her anchor?

A. No I have not observed any distance. I was not able to see how far she was off the banks.

Q. Now state Captain what would have been the effect of casting anchor when the vessel was about to or would make her curve or turn to starboard?

Mr. HOGAN: Objected to — irrelevant, incompetent, and immaterial as the witness has not shown himself qualified to answer.

A. If he had dropped his anchor and the same had held it would cut the vessel down and she would have swung around and torn the bridge down and done considerable damage to herself.

Q. If her anchor chain had broken then what?

Mr. HOGAN: Same objection.

A. She would have kept on her same course.

Q. Would it have been possible to have avoided a collision with the bridge by the casting of her anchor at the point where she changed her course?

Mr. HOGAN: Objects as calling for the opinion of witness on a matter at issue in the question and is irrelevant and incompetent; witness has not shown himself qualified to answer.

440 A. From the point where I stood I could not say just the exact distance off the pier but apparently he could not have avoided the accident by dropping his anchor.

HOGAN: Moves to strike the answer as he shows that he has not the necessary knowledge to answer the question, also for the reasons given in the objection.

Q. Assuming that the vessel changed her course to starboard one hundred and fifty or eighty feet from the pier of the bridge then state if you can what your answer would be to the question?

Mr. HOGAN: Same objection.

A. She could not drop anchor and clear the bridge one hundred and twenty feet off as the vessel is over two hundred feet and it takes a length of chain to hold her, to keep her from dragging her anchor.

A. How long have you been a licensed master of vessels?

A. Seven years. Since the law went into effect we had to have a license.

Q. State whether or not the Norwood could have avoided the collision with the bridge by the casting of her anchor and the reversing of her engines or by the reversing of her engines along at the point she changed her course, if the distance from the bridge at that time was less than two hundred feet.

Mr. HOGAN: Objects to as irrelevant, incompetent and immaterial and witness has not shown himself qualified to answer.

A. No, she could not as the backing of her engines would swing the stern to port and swing her across the wind and tide and drifted — into the bridge. I would like to state that the working of her engines, I am not acquainted with but as a rule that is the way the steamers act, single screw steamers, right hand propeller.

Mr. HOGAN: Moves to strike out witness' answer as it appears that he has not the knowledge to answer the question.

441 Q. Then if the Norwood is propelled by a single screw, right hand propeller then the action of the propeller upon the reversing would have the effect to drive the stern of the vessel to port.

A. Yes.

Mr. HOGAN: Same objection.

Q. Do you know whether it was possible for the steamer to have completed her movement so as to avoid the bridge?

Mr. HOGAN: Same objection.

A. No.

Q. Do you know whether or not there was any dolphins or piling or protection of any kind to the piers where the Norwood struck, the bridge?

Mr. HOGAN: Objected to as immaterial.

A. There were none.

Q. Did you observe the vessel after she struck the bridge?

A. I seen her lying at the wharf later.

Q. Did you observe what, if any, effects the collision with the bridge produced on the vessel?

Mr. HOGAN: Objected — as immaterial.

A. Yes, I saw a break in the upper house.

Q. What was the extend of the injury?

Mr. HOGAN: Objected — as immaterial.

A. I was not close to her and cannot say the extent of it.

Q. Do you know whether or not there were any boards broken on the vessel?

Mr. HOGAN: Objected to as immaterial.

A. Yes.

Q. How thick were those boards?

Mr. HOGAN: Same objection.

A. I do not know. I was not near enough to examine it.

442 Q. Where on the vessel was the point of collision as shown by the break?

Mr. HOGAN: Same objection.

A. Well, I have not closely observed it but when seeing the damage I also passed up the river on a boat, a steam launch and did not

pay particular notice but somewhere's near the middle part of the house, abaft the middle of the house.

Q. Above or below the railing of the vessel?

A. Above.

Q. State if you know the dimensions of the guard on the Norwood.

A. I do not know.

Q. Do you know how long the Norwood is, her dimensions?

A. About two hundred feet in length and forty feet in width.

Q. Assuming that at the time she cast anchor she was within two hundred feet of the bridge and there she cast anchor because of the fact that she could not proceed safely any further in the direction she was going on account of running ashore on the tide lands; you may state whether or not it was possible under those conditions to avoid the vessel striking that bridge?

Mr. HOGAN: Objected — as irrelevant, incompetent, immaterial question assuming some facts not proven, calling for the opinion of the witness on matter in issue and the witness has not shown himself competent to answer.

A. She might, perhaps by dropping her anchor and steaming ahead, checking herself and giving them a show to open the bridge, if kept closed naturally they just backed into it.

Q. Assuming that the bridge opened with the swinging of the vessel that is, the vessel swinging into the opening of the bridge as she swung, what if anything could the vessel have done to avoid the collision with the bridge?

443 Mr. HOGAN: Same objection.

A. She could not do anything, the bridge had hardly started to open when the vessel swung in the opening of the bridge.

Q. What would be the effect of reversing the engines, giving her full speed backwards as she swung into the opening, with her anchor cast, on her collision with the bridge?

Mr. HOGAN: Same objection.

A. You mean if she came in contact with the bridge?

Q. She swung in and her engines reversed at full speed, astern what if any effect would that have on the force with which she would strike the bridge, provided her anchor was cast at the same time?

Mr. HOGAN: Same objection.

A. If her anchor was cast as far to the south side it would bring her back towards the center draw of the middle span.

Q. What effect would it have on the collision?

A. It would ease the collision.

Mr. HOGAN cross-examines witness:

Q. You are master of the schooner Phillipine?

A. Yes.

Q. That is a sailing vessel?

A. Yes.

Q. Who are the owners of that vessel?

A. Sanders & Kirchmann.

Q. Who are the agents?

A. They are the agents.

Q. I think you stated captain that you had no experience as an officer on board a steamer?

A. That is correct.

Q. You said however that many years ago you worked on board a steamer for about three months?

444 A. Yes, three or four.

Q. In what capacity?

A. An able seaman.

Q. What were your duties as able seaman at that time?

A. The duties in a sailor's life are various.

Q. In a general way state their character?

A. See to the working of the vessel and sails, clean and paint, make sails, splicing ropes, and many other-, which are too many to mention.

Q. Now you remained standing on the "G" street wharf when the Norwood pulled out on this particular trip where the damage was done to the bridge?

A. Yes.

Q. You were standing there with Captain Sarrins and Captain Detrick and some others at the time?

A. Yes.

Q. You were conversing with these men at that time?

A. I was.

Q. You were conversing while the Norwood was on her way towards the bridge?

A. Yes.

Q. Did you keep your eye on the Norwood all the time?

A. Yes.

Q. Kept looking at her all the time?

A. Yes.

Q. Did Captain Sarrins and Captain Detrick all the time?

A. Yes I think so as we were facing the river.

Q. The whole group of men standing on the wharf so far as you know, kept looking at the Norwood as she was making her course?

445 A. As far as I know.

Q. What was the occasion of your doing that?

A. Well after hearing her blow the second whistle and the bridge not opening we were watching the bridge and passing remarks, that they were slow in opening the bridge.

Q. It occurred to you then, you men standing there when you heard the second whistle and saw the bridge was not yet open that the Norwood was liable to get into danger?

A. Yes if they did not open the bridge.

Q. I say, that it occurred to you at the time you heard the second whistle?

A. Yes.

Q. Could you see the bridge plainly from where you stood?

A. Yes.

Q. How far was it from where you stood at the "G" street wharf to the bridge, captain?

A. I think about a quarter of a mile, perhaps a little more.

Q. Well captain you are more used to measuring by fathoms I presume, will you give it in fathoms?

A. I should judge from five hundred fathoms, perhaps a little more.

Q. A fathom is how many feet?

A. Six feet.

Q. Now how far if you know, was the Norwood from the "G" street wharf where you were standing, when she blew her second whistle for the bridge?

A. I should judge by the distance I gave she was two hundred fathoms away or perhaps a little more.

Q. And when she blew the second whistle for the bridge how far was she from the bridge at that time in your judgment?

A. Between three and four hundred fathoms.

446 Q. The bridge there has two openings when the draw is swinging a south span and a north span?

A. Yes.

Q. Towards which of these openings was the Norwood directing her course at the time of the second whistle?

A. That I do not know. She could direct it either way.

Q. Was she midstream on the river?

A. I think, if anything, she was a little to the north side.

Q. Then being a little towards the north side and continuing her course straight ahead she would naturally have come to the north side span.

A. Yes, if she kept in that direction she would have.

Q. Now after she blew her second whistle how far in fathoms did she steer ahead before changing her course to the south.

A. I could not state that distance.

Q. In your judgment how far.

A. I should judge she steamed about two hundred fathoms.

Q. Then what, if any change did she make in her course?

A. She headed to starboard.

Q. Headed to starboard? What direction by the compass was that, approximately, I mean north or south?

A. Southerly.

Q. At the time she changed her course there and made her curve towards the south could you tell from where you were standing how far she was from the bridge?

A. No.

Q. You could not tell that?

A. No.

Q. You could not tell that even approximately?

A. No it appeared to me that she was clear.

447 Q. You saw that when she made this curve or changed her course that she appeared to you at that time, that she was clear of the bridge and out of danger?

A. It appeared that way to me. It appeared that she was clear of the bridge. She did not touch the bridge at that time.

Q. Were you paying particular attention to the bridge at that time and the time the vessel changed her course, to see if the draw of the bridge had moved at all?

A. It had not moved.

Q. The question is Captain did you pay particular attention to the draw?

A. I did.

Q. Then how far did the Norwood continue her course on this curve to the south before casting anchor?

A. About one hundred fathoms or one hundred and fifty.

Q. Then she cast anchor?

A. Yes.

Q. And I think you stated at that time she was crosswise with the stream?

A. Yes, broadside to the stream.

Q. Was her stern swinging up stream?

A. Yes. Perhaps the bow pointed slightly down the river.

Q. Could you tell from where you were whether the captain on casting the anchor, whether he applied the power to his vessel in such a way as to drive her backwards?

A. Well, that I do not know.

Q. You could not tell that from where you were?

A. No.

Q. You mean to say that you could not tell from where you were whether he endeavored to back his vessel or whether he was backing by the action of the tide?

448 A. No.

Q. Did you see the vessel strike the bridge or any part of the bridge that day or any of the working of the bridge?

A. No.

Q. Did you see Captain Martin draw in his anchor or attempt to draw in his anchor, while you were standing there?

A. No, I walked away immediately after she dropped her anchor.

Q. Did your friends all go away?

A. Yes, as near as I can remember.

Q. At the distance you were standing from the Norwood when she dropped her anchor that is, you at the "G" street wharf and she near the bridge could you recognize a man at that distance?

A. No.

Q. Your opportunity for observing just what was going on at that distance was not the best?

A. No. Did not observe what was going on on board.

Q. Now, you say the Norwood started out at slow speed?

A. Yes.

Q. Probably a mile an hour from her own propeller and in addition to that six miles an hour or more by the action of the tide and wind? That you think was about her speed?

A. Yes, about.

Q. That would be seven or eight miles an hour?

A. About seven miles an hour.

Q. You consider that slow speed?

A. With the condition of the wind and tide they would have to go that speed to keep steerage way for the vessel.

Q. That does not answer the question. I asked you if that was slow speed?

A. It is.

449 Q. Now when she was making this curve towards the south for what rate of speed was she running?

A. I could not state the speed. It makes some time for a vessel to get under headway.

Q. You do not know what her speed was in making this curve?

A. No.

Q. But at any rate you consider the speed she was running from the "G" street wharf to the bridge was very slow?

A. Yes.

Q. Supposing the action of her propeller had been reversed to drive her backwards how long would it take to stop her how far would it take her before she would go forward?

A. I cannot answer that. One boat would go astern quicker than another.

Q. Now do you wish to be understood as saying, Captain, that with this vessel going over that course at the slowest possible speed she was capable of in order to control her steerage that if the anchor had been cast out it would have cut down the vessel?

A. I did not say it would cut it down. I said if the chain held and did not cut it down or perhaps cut it down, at any rate she would have swung around and struck the bridge.

Q. In your judgment Captain if the vessel is running at seven miles an hour, an empty vessel of the size of the Norwood and she cast her anchor while running at that slow rate of speed on a bottom like the Chehalis river bottom, Captain, as a seaman do you think there is danger of her either breaking her anchor chain or cutting down the vessel?

A. Yes.

Q. You give it as your opinion?

A. Yes.

450 Q. What do you mean by cutting down the vessel?

A. It will cut through the wood part of the vessel. The hawse pipes that the chain runs through would cut through the wood.

Q. That is to say the chain of the anchor would cut through the planking above deck?

A. Below deck. The hawse pipe is below deck and would cut below deck.

Q. You stated that the Norwood left the "G" street wharf at about 11:35?

A. Yes.

Q. And you stood there and watched her for some time?

A. Yes.

Q. You saw her cast anchor and then walked away?

A. Yes.

Q. What time was it when you walked away, if you know?

A. I did not take notice of the time.

Q. About what time?

A. About twelve o'clock I should think.

Q. Was the draw of the bridge open when you left?

A. Partly open. I moved away just as the draw was partly opened.

Q. The draw was partly open and in the motion of opening when you left. If the draw started to open it would not stop?

A. No.

Q. Now which way do you say the draw opened. Which side would it swing?

A. I think the south span opened upwards. I would not state positively.

Q. What kind of a day was the 7th of May, Captain?

A. I do not know.

Q. With reference to the clearness and sunshine?

451 A. I do not remember. I know there was no fog.

Q. Did you ever make any test of the flow of the tide waters to determine how fast it travels?

A. No not exactly. You can tell partly. A person going to sea notices the vessel passing through the waters flowing by the side of the vessel. You can judge pretty nearly of the speed.

Q. No- in practical experience, is it true that at sea that you have little *in* motion, as a vessel always is at sea, that you have little or no opportunity to judge of the speed of the tide and that your opportunity to judge of the speed of the tide is much better on land near the water where you can observe with reference to land marks?

A. I can judge the speed as well in the vessel or boat as on land as the tide acts the same passing by the same as when a vessel is sailing through the water. Of course I cannot state the strength of the tide if a vessel is moving unless I know the speed of the vessel.

Q. You were present here at this examination before this notary when the depositions of Captain Sarrins were taken were you?

A. I was.

Q. You were here and heard the whole of the testimony did you?

A. I think I did.

Q. You afterwards heard the testimony read?

A. Yes.

Q. You also sat here while the testimony of Captain Wierschuleit was taken did you?

A. Yes, part of it.

Q. You were also here and heard the testimony read?

A. Yes part of it, not all.

Q. When you say that the tide was running at the rate
452 of about six miles, as I think you stated, do you base that on your own judgment or are you influenced in the opinion by what you heard Captain Sarrins and Captain Wierschuleit say, as to the velocity of the tide?

A. I think I said five or six miles, as my own judgment, I am not influenced by any one's opinion.

Q. Now did the Norwood have any sails out that day in going over that course?

A. No, they do not use sails in here.

Q. Now, you say the tide and wind combined without motor power of the vessel would have a tendency to drive the vessel on that day at the rate of about six miles an hour or as near as I can remember between six and seven miles?

A. Yes.

Q. That is substantially your answer?

A. Yes.

Q. Now how much of that speed do you attribute to the tide independent of the wind?

A. I should think about five miles an hour, perhaps a little more.

Q. How much of that speed in your judgment do you attribute to the wind on the action of the vessel?

A. One or two miles.

Q. Now, in addition to these forces the vessel was forced forward by her own motor power, how much do you attribute to her own motor power?

A. About a mile or one and a half miles an hour.

Mr. Cross redirected.

Q. What would be the effect of the anchor chain cutting the vessel down on the vessel itself?

A. It would put it to considerable expense to get a new
453 bow and new timber.

Q. And the effect it would make of her taking water?

Mr. HOGAN objects to the question.

A. If the planks were cut below the water it will.

Q. You were asked on cross examination whether you were holding conversation between yourselves while on the wharf and while the vessel was on its course towards the bridge. State whether or not that conversation had relation to the Norwood and the bridge?

Mr. HOGAN: Objects as immaterial.

A. The general conversation did not relate to the bridge or to the Norwood but some one passed the remark that the bridge was slow in opening but no one at that time thought of any danger until after the second whistle was blown or a little later than that.

Q. What danger presented itself to you at that time?

Mr. HOGAN objected as immaterial.

A. The danger I saw in it was that if they did not open the bridge he would go through it. He could not have helped it.

Testimony closed.

H. F. FREDERICKSEN.

Corrections.

In using the word "mile" nautical mile is meant, page 14 line 6.

Line 9, page 14, "500 fathoms" corrected to "350 fathoms."

Line 16 page 14, "two hundred fathoms" corrected to read "175 fathoms."

Line 20 page 14, "Between three and four hundred fathoms corrected to read "175 fathoms."

H. R. FREDERICKSEN.

Certificate.

454 STATE OF WASHINGTON,
County of Chehalis, ss:

This certifies that the above corrections were made and signed in my presence and in the presence of the attorneys for the respective parties by the witness H. R. Frederickson after reading and signing of the original deposition.

[SEAL.]

E. E. SHIELDS,
Notary Public in and for the State of
Washington, Residing at Aberdeen.

Published and filed Nov. 5, 1906.

W. C. BIRDWELL, Clerk.
A. E. GRAHAM, Deputy.

455 In the Superior Court of the State of Washington in and for
Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to said action through their respective attorneys that the deposition of Captain John R. Sarrines, master of the schooner "Espada" may be taken before E. E. Shields, a notary public in and for the state of Washington residing at Aberdeen, at the office of J. C. Cross, in the city of Aberdeen, Chehalis county Washington on the 14th day of May, 1906, commencing at the hour of 3:30 in the afternoon of that day and continuing until the same is completed.

It is further stipulated and agreed that the said deposition may be taken in shorthand and transcribed and when so taken and transcribed shall be signed by the witness in the manner provided by the statute.

It is further stipulated and agreed that the testimony when so taken shall have the same force and effect as if taken on notice or

commission according to the statute and rules and practice of the above court.

That the parties hereto waive any and all objections and exceptions to the time and manner of the taking of the said deposition, and all other objections saving and reserving the right to object and except to the propounding of any question or questions, or the making of any answer or answers which either of the parties
456 hereto may deem irrelevant and immaterial or improper.

That this stipulation shall be and become full power and authority for the taking of the said deposition and that the said E. E. Shields, notary aforesaid, shall attach this stipulation to and make the same a part of the return of the said deposition.

In witness whereof the parties hereto have signed this stipulation in duplicate this the 14th day of May, 1906.

JOHN C. HOGAN,
Attorney for Plaintiff.
J. C. CROSS,
Attorney for Defendant.

457 In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Return and Certificate.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 14th day of May, 1906, at the office of J. C. Cross, in the city of Aberdeen, Chehalis County, Washington at the hour of 3:30 of that day, pursuant to the stipulation hereunto attached and made a part of this return and certificate, there being present the plaintiff in person and his attorney, J. C. Hogan, Esq., and the defendants by their attorney, J. C. Cross, there appeared before me Captain JOHN R. SARRINES, master of the schooner Espada, a witness produced on behalf of the defendants who being by me first duly sworn to testify to the truth to the whole truth and nothing else but the truth in answer to said interrogatories as may be propounded — him as such witness, gave testimony as shown by this deposition and the said deposition was carefully read to the said witness and there subscribed by him in my presence.

In witness whereof I have hereunto set my hand and official seal this 14th day of May, 1906.

E. E. SHEILDS,
Notary Public in and for the State of Washington,
Residing at Aberdeen, in said State.

458 Q. Did you see the Norwood on *that* 7th last?

A. I did.

Q. What time of day?

A. Between eleven and twelve in the forenoon.

Q. On the 7th of May 1906 where was you?

A. I was on board the same steamer, on the Norwood.

Q. Where was the steamer, where was she lying?

A. At "G" street dock.

Q. Was the vessel loaded or unloaded?

A. Just arrived from sea as I came aboard discharging different kinds of merchandise.

Q. Did you observe the vessel make any movements that day?

A. Yes sir, somewhere about twelve o'clock it went to Aberdeen Lumber and Shingle Company and loaded lumber.

Q. Did you observe as to whether or not there were any whistles blown at that time?

A. It blew as it left the wharf, just as she was leaving.

Q. How was she standing or headed as to the wharf?

A. With her head up the river with her bow.

Q. Do you remember how many cables she was tied with to the wharf?

A. She was tied with two lines at the time as she let go of the last line she went, the last line was the spring line.

Q. Did you observe the tides and the wind at this time?

A. Yes sir.

Q. How were the tides and wind?

A. The tide was flood tide and the wind was northwest or somewhere near it.

Q. How were the tides and winds as to being strong or otherwise?

A. Well I have *been* quite often and sometimes it *is* strong and other times not quite so strong but about six or seven miles
459 per hour.

Mr. HOGAN: Tide and wind combined?

A. Yes sir.

Q. That is the vessel if left to the tide and gale?

A. Yes sir.

Q. As to the motion of the vessel did you observe how she moved away from the dock?

A. Yes sir.

Q. State how as to speed.

A. Was near full speed as she left the dock and she blew her whistle she was going about half speed between the dock and bridge the bridge was not open as she blew her whistles again.

Q. What was the nature of the second whistle?

A. Same as the first.

Q. Did you observe the bridge in the mean time?

A. Yes sir, I did, the bridge was not open.

Q. Did you notice whether it was started to be opened as she whistled the second time?

A. I could not tell, I did not take notice.

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Q. Now did you observe her movements after the second whistle?

A. It commenced to swing around and go back again but the tide was too strong.

Q. In coming from or going from the "G" street dock and the opening in the bridge how would the vessel naturally go as to course relative to the stream?

A. I could not answer that question sir, she was going towards the stream.

Q. Was she crossing the tide?

A. Yes sir after she blew the second whistle she was broadside to the tides.

460 Q. How many were there at the point you were at the time you were making this observation?

A. I remember *the* Captain Fredericksen of the Phillipine and Captain Dedrick of the Cohalla.

Q. Did you observe the vessel after it made its second whistle?

A. Yes sir it commenced to slow down and not so fast as it did at the time of the blowing of the first whistle.

Q. You and those that were present were speaking of the situation?

A. We made a remark between ourselves.

Q. Tell in your own way just what you saw as the vessel blew her second whistle.

A. As she blew the second whistle she did not go so fast and swung sideways towards the south side.

Q. What position was she in when you last saw her?

A. She dropped anchor and was trying to heave it up again.

Q. What position was the vessel standing in relation to the stream when you saw the anchor cast, was it headed towards south bank?

A. Toward the bank and the south side.

Q. Are you acquainted with the conditions as to tide flats and so forth, close to the bridge and the south side?

A. I am well acquainted.

Q. When you heard the vessel whistle the second time state as to whether or not the vessel had turned toward the tide flats on the south side?

A. Yes sir.

Q. Do you know about where she cast her anchor in the stream?

A. It appeared to me very close to the bridge but don't know how far.

Q. Close to the tide lands?

461 A. Almost on top of it.

Q. If the vessel had proceeded on the same course that she was taking where would she have landed if at all?

Mr. HOGAN: I object to the question on the ground that it calls for the opinion of the witness regarding the fact not proven. And for the further reason that he has not shown himself competent to testify.

A. I believe that the steamer if it had gone ahead it would have landed in South Aberdeen or on the mud flats.

Q. You saw the vessel after she had cast anchor?

A. No sir, as soon as he had cast anchor we said Martin is all right and we turned around and walked away.

Q. Did you observe the bridge at this time?

A. Yes sir.

Q. State whether or not it had begun to open or not.

A. No it did not.

Q. What is the signal for opening the bridge which you know or do you know?

A. I think it is one long and three short whistles.

Q. Do you know of any regulations for the bridge?

A. No sir, I am not aware of that.

Q. All you know is you know the number of whistles to open the bridge?

A. Yes sir.

Q. Have you been along the course of the steamer since the 7th the course that she took?

A. Yes sir, several times crossing it and so on.

Q. Have you made observations as to the relative position of the steamer, and the bridge and the tide shore there where she cast her anchor since that time?

462 A. I have.

Q. Do you know about what the length of the vessel is?

A. I do not know.

Q. Do you know how much water she draws?

A. About nineteen feet when loaded.

Q. Was the bridge between the starting point at "G" street and the wharf of the lumber company where she was destined to load?

A. Yes sir.

Q. You observed which side of the swinging draw he was making for when he blew his second whistle?

A. I cannot answer that he could go on either side of the draw but know not which side he intended to go.

Q. Is there any rule for passing those draws?

A. I do not know.

Q. From your observations made at the time that the vessel cast anchor you may state whether or not it was possible for that steamer to safely proceed directly as she was going when she cast anchor?

Mr. HOGAN: Object to the question as calling for the opinion of the witness on one of the questions at issue and further that the witness has not shown himself competent to testify and the answer called for is irrelevant, immaterial and incompetent.

A. I could not state.

Q. Assuming Mr. Witness that at the time the vessel began to make her turn to the right she had attempted to go backwards, what would have been the effect on the vessel relative to the bridge?

Mr. HOGAN: Objected — as irrelevant, incompetent and immaterial calling for the opinion of the witness on one of the questions at issue and further that the witness has not shown himself competent to testify.

463 A. If he backed in he would have knocked the draw span down I believe.

Q. Are you acquainted with the course of vessels of the character of the Norwood, that is when she attempts to back?

Mr. HOGAN: Objected — as irrelevant, incompetent and immaterial calling for the opinion of the witness on one of the questions at issue and further that the witness has not shown himself competent to testify.

A. Most of the steamers of the class of the Norwood as a rule, by backing, they back to port.

Q. And when you say that if he had backed his vessel he would have struck the bridge how do you explain the afterward movement?

Mr. HOGAN: Objected — as irrelevant, incompetent and immaterial calling for the opinion of the witness on one of the questions at issue and further that the witness has not shown himself competent to testify.

A. Well she would strike it if she had backed she would have turned to port.

Q. And the tide is that way?

A. Yes sir.

Q. So that the wind and the tide would have struck her alongside?

A. Yes sir.

Q. How far would the steamer have had to back to become broadside with the wind and tide?

A. I don't know.

Q. You are acquainted with steamers or steam vessels?

A. Yes sir I am licensed mate of steam vessels.

Q. How long?

A. Since 1898. Sail before that.

Q. You have been an officer of steamers and sail vessels
464 for how many years?

A. Since 1892.

Q. Now captain you may state whether or not it was possible for Captain Martin to have manipulated or directed the Norwood any way so as to — avoided striking that bridge?

Mr. HOGAN: Objected to as calling for the opinion of the witness on the question at issue and as irrelevant and incompetent and immaterial, the witness does not show himself qualified to answer.

A. I believe that if I had been in charge of that steamer I or any one else could have not done better if as well.

Q. State whether or not the course and conduct of the vessel as directed by Captain Martin was the proper course under the circumstances which you observed?

Mr. HOGAN: Objected to as calling for the opinion of the witness on the question at issue and as irrelevant and incompetent and immaterial, the witness does not show himself qualified to answer.

A. Yes sir.

Q. Confine yourself to the conditions after the blowing of the second whistle.

Mr. HOGAN: Objected to as calling for the opinion of the witness on the question at issue and as irrelevant and incompetent and immaterial, the witness does not show himself qualified to answer.

Q. What I observed, Captain Martin done what I would have done if I were in charge of the steamer, perhaps some would have done worse and run into the tide flats but Captain Martin appeared to be very cool headed and handled his steamer very competent.

465 Cross-examination by Mr. HOGAN:

Q. You are master of the Espada, Captain?

A. Yes sir.

Q. Who are the owners of the vessel?

A. Sudden & Christensen.

Q. The same people who control the Norwood?

A. Yes sir.

Q. What sort of a vessel is the Espada?

A. Four masted schooner.

Q. Have you a master's license for a steam vessel?

A. No sir I have not. I am just out ready to take a master's. I could have done it before but I neglected it.

Q. Is your master's license limited to a sailing vessel?

A. I beg your pardon. One is for steam and one for sailing.

Q. When did you arrive in Aberdeen with your vessel on this trip?

A. 25th day of April.

Q. Where were you loading?

A. South Aberdeen, Lumber and Shingle Company.

Q. Same place where the Norwood loaded?

A. Yes.

Q. You say you went aboard the Norwood, Captain, on the 7th day of May, the day the bridge was broken out?

A. Yes.

Q. Where were you immediately before that?

A. Came across the river from my own vessel.

Q. About what hour of the day did you leave your vessel?

A. At the same hour, as it only took five or six minutes.

Q. What hour was that?

A. About eleven or five minutes after eleven.

Q. Did you stay aboard your vessel the night before?

466 A. Well I do not know what business that is of yours sir. I might have been, I am master of my own vessel.

Q. You do not decline to answer that?

A. No, I was aboard my own vessel.

Q. What time did you go aboard?

A. I don't remember.

Q. Do you know any place you were the night before?

A. No, I do not.

Q. Now when you went aboard the Norwood between eleven and twelve you say the Norwood had been discharging cargo about two hours?

A. I beg your pardon, not two hours.

Q. Prior then to that time?

A. No sir.

Q. How long had the Norwood been discharging cargo?

A. I don't know.

Q. About how long was it before coming aboard you saw the Norwood lying at the "G" street wharf?

A. I do not understand the question.

Q. Well, did you see the Norwood lying at the "G" street wharf before you left your vessel in South Aberdeen?

A. Yes.

Q. How long before that did you first see the Norwood lying there?

A. Well, I do not remember, but think it must have been nine or ten o'clock.

Q. Then between nine or ten you saw the Norwood lying at the "G" street wharf?

A. I told you so. It is very easy to find out.

Q. Do you know how long?

A. No I do not. I could not state within the hour or half hour.

Q. You and Captain Martin have been friends for thirty
467 or three and one half years, you say?

A. Yes, more or less, sir.

Q. Was it your purpose in coming from South Aberdeen when you saw the Norwood to visit Captain Martin?

A. Yes sir. Belonging to the same company I naturally went over to see him and shake hands, but I did not come for that purpose alone.

Q. You went aboard to shake hands?

A. Well perhaps we kissed each other.

Q. How long did you stay aboard?

A. Very few minutes. I do not know but about ten or twelve minutes.

Q. Who was with you when you went aboard?

A. Captain Fredericksen.

Q. Who else?

A. No one.

Q. Where did you meet Captain Frederickson?

A. At the ferry. We went across together on the ferry.

Q. Is he loading at the Aberdeen Lumber & Shingle Company?

A. No.

Q. You and Captain Frederickson crossed the river together and went aboard the Norwood to visit Captain Martin?

A. Yes.

Q. You say you stayed about ten or twelve minutes?

A. Yes more or less.

Q. Where did you see Captain Martin. What part of the vessel was he in?

A. On the main deck, looking at some cargo.

Q. He was on the main deck?

A. Yes on the main deck of his steamer.

Q. Did you go to his cabin?

468 A. Yes.

Q. Did Captain Frederickson go to his cabin?

A. I do not know.

Q. How long did you stay in the cabin?

A. I was only ten or twelve minutes on board.

Q. What part of that time did you spend in the cabin?

A. Most of the time I was on deck, speaking with his wife and children. So you can imagine the time I was in the cabin.

Q. Did you have anything to drink there?

A. I do not drink.

Q. You do not drink at all Captain?

A. Yes.

Q. It has gone into the record Captain, that you do not drink. Do you drink and did you drink on board that vessel that day?

A. Yes I drink sometimes but did not drink anything on board that day.

Q. Did Captain Frederickson?

A. I think not.

Q. Did Captain Martin?

A. I do not know. I could not state. He could not very well while I was there as he was on the main deck and the cabin is quite a distance off. It is quite a ways. I cannot tell you. I do not know how to explain it.

Q. You went into the captain's cabin?

A. I spent most of the time on deck.

Q. Now then you stayed on board until the captain was ready to start?

A. I did not. I left about fifteen minutes before he started.

Q. You left fifteen minutes before he started out?

A. Yes, more or less.

469 Q. Where did you go to?

A. I stood on the wharf until he left.

Q. What did you do there?

A. We watched the vessel until she left, me and some other captains.

Q. Who were all the captains standing there on the wharf?

A. I was on, myself, Captain Frederickson, and the captain of the Kohala, captain of the Coronado, Linquist, and Captain Johnson of the Traveler and Captain of the Printer Sanborne, I think his name is.

Q. Now you stood there and when the steamer left you watched her?

A. Yes.

Q. He started out at full speed?

A. No, after whistling he started out.

Q. How far is it from the wharf to the drawbridge?

A. I do not know.

Q. You could not form an estimate?

A. I could not state whether it was a quarter of a mile or more but leave it to the judgment of Mr. West and yourself.

Q. You do not pretend to form an idea, was it a quarter of a mile or three quarters of a mile.

A. I do not know, probably a quarter of a mile, more or less.

Q. What is the speed of the Norwood, at full speed?

A. I do not know it.

Q. What do you think about it?

A. I could not say.

Q. You do not form any idea of it?

A. I did not try to.

Q. Well do you think she ran twelve or fifteen miles?

470. A. I do not know.

Q. Did you stand there and watch them leave?

A. Yes.

Q. Now when she got near the bridge did you hear her whistle the second time?

A. Not near the bridge, but about half way to the bridge she blew the second whistle.

Q. About half way to the bridge?

A. Yes sir.

Q. How many feet or fraction of mile was she from you?

A. I could not say.

Q. What distance from you was she then?

A. About half way to the bridge from the "G" street wharf.

Q. How many feet?

A. I do not know.

Q. Could you tell in fathoms or yards?

A. No.

Q. Had she passed the mouth of the Wishkah river when she whistled the second time?

A. She must have passed it.

Q. Well had she passed the river before blowing the second time?

A. I could not say but think they were abreast it but could not swear to it.

Q. Where was she in reference to the West & Slade Log Boom?

A. I could not say as I do not know how far that extends.

Q. Did you hear her whistle a second time for the bridge and did you see her cast anchor at that time?

A. Yes sir. He did not cast anchor at the second whistle.

Q. How long after she whistled the second time before she cast anchor.

471. A. I did not notice the time but it must have been only a few minutes.

Q. How far ahead had they moved.

A. I do not know the distance.

Q. Have you any idea the distance she moved after blowing the second whistle before she cast anchor?

A. It is impossible to say in fathoms or miles. We have a draw-

here Mr. Cross now and that will tell you about as near as I can

How many feet?

I could not state how many feet.

Could you tell how many yards?

I could not tell unless I had a chart.

How near was he to the bridge?

I could not judge but it appeared to us that Captain Martin
d clear it easy.

Do you know how near she was to the bridge then?

It appeared to us he would clear it easy. I left the wharf and
others with me before it happened. I know she was clear but
ide was swinging them towards the bridge.

How far from the bridge?

I do not know.

In what direction was the vessel held when you saw them
anchor?

Towards the shore of South Aberdeen but the tide was still
ging her towards the bridge.

The vessel then was crosswise of the stream when he began
ng out the anchor.

With the bow down stream, against the tide, down river.

You spoke of his drawing in the anchor. Did you see him do

No, he had just commenced to do it as it appeared to me. I
not tell just exactly what he was doing.

When you saw him drawing in the anchor you left?

I am not sure he brought it in but think he was doing that.

Q. Then you went away?

A. Yes.

Q. How far were you from the Norwood or Captain Martin
you saw him throw out anchor?

I was at the "G" street wharf.

How far is that from him?

As far as he was from me.

And you cannot tell how near he was to the bridge.

It appeared to me before I left the wharf they were clear of
ridge.

How far do you call clear?

Well a hair's breadth would be clear, so would more.

You cannot tell how far it was?

No sir I cannot.

Did you see him strike the bridge?

No.

Was the vessel moving when you left?

Only swinging towards the bridge. That is as near as I
see. I was too far to tell exactly what it was doing.

That does not prevent you from expressing an opinion as to
he handled his vessel?

No I think Martin did all he could do.

(Mr. Hogan thinks this not responsive to question and moves to strike it out.)

Q. Now this bridge has two openings, when the span is open it admits a vessel to pass through either opening has it not?

A. I do not know on which side he would go.

Q. Well there are two openings?

473 A. Yes sir.

Q. Now toward which one of them did the Norwood direct her course when she first started out?

A. I could not tell. I was not in the boat. I could not tell what his intentions were.

Q. In going from the "G" street wharf towards the bridge on which side of the center of the stream or river did the Norwood keep on her first course?

A. If the bridge had been opened when he blew the whistle even the second time he could have gone through either side.

Q. You have seen Martin since this happened, talked with him about it?

A. Yes.

Q. You have gone all over it together?

A. We spoke of it.

Q. Do you refuse to answer this?

A. We spoke of it.

Q. You talked it all over?

A. We spoke of it.

Q. You do not know how long it was after he left the "G" street wharf before Martin struck this bridge?

A. I do not know exactly. I did not notice particularly. I- was not very long, probably a half or three quarters of a hour, probably less.

Q. How near was the tide full that day?

A. I did not notice. The tide was running in fast.

Q. Was it a clear day?

A. I think so.

Q. What is the tonnage of the Norwood?

A. I do not know.

474 Q. Have you any idea?

A. I have not.

Q. With a chief mate's license yet you cannot state?

A. I could not say. I have no record. I have knowledge on that point but do not express any opinion.

Redirect examination by Mr. Cross:

Q. In your cross examination you were asked how long it was after the captain cast anchor until the Norwood struck the bridge.

Mr. HOGAN: I asked him how long after he left the wharf.

A. I did not see what time he struck the bridge because I did not see it when it struck.

Mr. Cross: From suggestions made in the cross examination as to

Captain Martin being under the influence of liquor or taking any at the "G" street wharf. You may state whether or not he was?

A. I am sure he was not.

Q. Were you well acquainted with the captain?

A. Yes.

Q. Have you ever seen him under the influence of liquor?

A. No.

Q. State whether or not at the "G" street wharf he was engaged in and about his vessel and if so what was he doing?

A. He was attending to some business on the main deck and I could not explain all this.

Q. With whom was he doing business?

A. A gentleman from Seattle, Mr. Bryant, working for Lewis, Anderson & Forbes. Giving orders in and about his vessel.

Recross-examination by Mr. HOGAN:

Q. I think you stated in your examination you did not notice whether or not the bridge was open?

475 A. I said it was not open as long as I stood there. When I left the bridge was still closed.

Q. Which anchor did he drop. Did he drop port anchor to starboard or starboard anchor to port?

A. I do not think a man could do that.

Q. Which anchor did he drop?

A. I could not say from where I stood.

Q. You could not see from that distance?

A. No.

Q. Which side of the vessel did he drop the anchor?

A. I could not say anything about it.

Q. The starboard would be on one side and the port anchor on the other, which did he drop?

A. I could not state.

Q. The reason was because you were too far away?

A. I could not say but I could see that they had an anchor but did not notice which anchor he used. I did not take particular notice.

JOHN R. SARRINES.

476 Published and filed Nov. 5, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

477 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,
vs.
JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys of record herein that the deposition of C. D. Schwartz, a witness produced on behalf of defendants may be taken at the office of J. C. Cross, in the city of Aberdeen, Chehalis county, Washington, and before E. E. Shields, a notary public, on the 23rd day of October, 1906, commencing at the hour of nine o'clock A. M. of said day and continuing from day to day until completed, and that the deposition when so taken shall have the same force and effect as if taken upon notice duly and regularly given therefor.

That the plaintiff herein waives any and all formal notice for the taking of the said deposition and any and all irregularities relating to the taking of the said deposition are hereby waived; the said plaintiff and the said defendants reserving to themselves the right to object and except to the materiality and sufficiency and relevancy of any portion of said deposition or testimony as to them or either of them may seem right and proper; and such objections or exceptions may be urged for the first time by either of the parties here to when the said deposition shall be offered or read in evidence. The reading to and signing by the witness of the transcribed shorthand notes is waived.

478 In witness whereof the parties hereto through their said attorneys sign this stipulation in duplicate this 23d day of October, A. D. 1906.

J. C. CROSS,
Of Attorneys for Defendant.
JOHN C. HOGAN,
Attorney for Plaintiff.

479 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,
vs.
JOHN I. MARTIN et al., Defendants.

Return and Certificate.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 23rd day of October, 1906, at the office of J. C. Cross, at the city of Aberdeen, Chehalis county,

Washington, at the hour of nine o'clock of that day, pursuant to the stipulation hereunto attached and made a part of this certificate and return, there being present the plaintiff in person, and his attorney of record, J. C. Hogan, Esq., and the defendants by their attorney J. C. Cross, there appeared before me C. D. Schwartz, a witness produced on behalf of defendants, who being by me first duly sworn to testify to the truth, to the whole truth and nothing else but the truth in answer to such interrogatories as might be propounded to him as such witness, gave testimony as shown by this deposition, and the said deposition to the said witness in his presence and in my presence and the signing of the said deposition by the said witness was in my presence, and in accordance with the stipulation, hereunto attached, waived by the parties hereto.

In witness whereof I have hereunto set my hand and official seal this — day of October, A. D. 1906.

E. E. SHIELDS,

*Notary Public in and for the State of Washington,
Residing at Aberdeen, in said State.*

480 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Deposition of C. D. Schwartz.

C. D. SCHWARTZ a witness produced on behalf of the defendants being first duly sworn to testify to the truth the whole truth and nothing but the truth, was interrogated and testified as follows, to-wit:

Direct examination by Mr. Cross:

Q. Where do you live Mr. Schwartz?

A. Los Angeles, I make that my headquarters.

Q. You are, are you in anyway connected with the steamer Norwood?

A. No sir, none whatever.

Q. State your age please?

A. Thirty years.

Q. Were you on board of the steamer Norwood on the 7th day of May last?

A. I was.

Q. In what capacity were you on board of her?

A. Merely as passenger.

Q. You were in a position to observe the conduct of the captain, Martin, on the 7th day of May from the time that he arrived in port of Grays Harbor until the vessel was alongside the mill company's wharf?

A. Yes sir.

Q. Above the bridge?

481 A. Yes sir.

Q. You were on board of the vessel when she discharged her cargo of freight at Aberdeen on that day?

A. Yes sir.

Q. What if anything was Captain Martin doing in connection with the vessel?

A. He was superintending it, around in front measuring chain there. A gentleman came down there, and they measured chain right in front of where we stood there. He was around there for quite a while.

Q. Did you observe his conduct in port when the vessel was discharging her cargo?

A. Yes sir, he carried a lady off of it. I was surprised that he could carry a person off of a place in an angle like that was. Angle was like that (indicating). Gangway up about forty-five degrees?

A. Forty-five degrees?

A. Yes sir, that is approximately of course. It was very steep.

Q. Was the lady ailing?

A. Yes, she had been. Didn't know whether she would live. They didn't know whether she would live through the night in Aberdeen here.

Q. Were you aboard when she left the "G" street dock?

A. Yes sir.

Q. Where was the captain when she swung loose from the dock?

A. He was on the bridge. That is what it is, the bridge.

Q. Where were you, what part of the vessel were you on?

A. On the right hand side, in bow. You might say on saloon deck.

482 Q. That would be about how far from the captain?

A. Should say about nine or ten feet. From where the captain was standing about twelve feet any way. He was walking back and forth all the time.

Q. Was there any one on the bridge with him?

A. Yes Black Jack, they call him. I believe that is the man's name.

Q. When did Captain Jack come aboard, do you know?

A. He came aboard down there. He hollered to him something about a letter, or something.

Q. The captain came aboard at the "G" street dock?

A. Yes sir. Talking something about a letter, something like that, a bill or something.

Q. What, if any, signal did you observe?

A. He blowed, at the wharf to, I suppose, to open the bridge, which they naturally do, and cast off. Just when he was casting off.

Q. You were in a position where you could see the bridge from where you stood?

A. Yes sir.

Q. Was any one with you?

A. Was, yes, the engineer, and the captain's wife stood right there.

Q. State how the vessel moved towards the bridge, as to her ed?

A. Was just merely moving, and that was all. Moved along out steerage way under slow bell.

Q. Under steerage way?

A. Just steerage way, that is as near as I can describe it, very

y. When he got down a ways he blew again.

Q. As to the distance to the bridge, about what portion do you think he had passed over?

A. One half or something like that from the wharf.

Q. Do you know about how far it is from the "G" street wharf to the bridge?

A. It would be more of a guess than anything else, in the approximate in the neighborhood of two thousand feet, or something like

t.
Q. Never made any thorough observation?

A. Never made any measure of it, or anything like that; that is approximately.

Q. Where were you when she blew the second time, were you standing in the same position as when you started—where were

?
A. I was in the same position on the boat.

Q. What, if any action did the vessel take when she blew the second time?

A. It kind of kept going a head a little bit, and of course it came him that the bridge was not opening, when he blew the second e and had practically stopped and the bridge started to open and kept headway on it, and the bridge went back again.

Q. Could you see the bridge plainly from where you stood?

A. Yes sir, of course I could not tell—

Q. What were you going to say?

A. I could not tell how far open, or anything, but know that the lge was open a distance.

Q. Could you distinguish the direction in which it was being ned, from where you stood?

A. Yes, the south end of the bridge started to swing down stream, then it went back, and swung the other way with the south end ards up stream.

Q. What position was the vessel in when the bridge began to open?

A. It was kind of on the move across the bay, across the river on the swing.

Q. Where was it when it began to open the first time?

A. It was held up for the bridge on the north side and then when bridge shut—

Q. There was a flag man went on the bridge, a span or two I suppose and waived it, and that time the vessel began to sheer off across river.

Q. To the right or left?

A. To the south I think.

Q. Did you observe a flag?

A. Yes sir. I observed the flag there.

Q. Was it stationary?

A. There was a man came out from the house, and ran along the bridge aways. I saw the fellow running along and waving it.

Q. You saw it?

A. Yes sir.

Q. Which direction would you say he went?

A. What I could see on the south side?

Q. That was the first signal that you had noticed?

A. Yes sir, that was the first signal that I noticed.

Q. How far was the vessel from the bridge when it closed back?

A. About three hundred feet I suppose.

Q. Where were you at the time that the bridge closed back relative to the time when you saw the signal?

A. A very short time. It seemed about that time. Some one went and got a flag. I suppose one half a minute, may be more, about that. It was immediately afterward. It could not have been very long.

Q. You were in a position to observe the opening of the bridge from where you stood until it became fully opened?

485 A. Yes sir.

Q. About how was the vessel standing relative to the bridge, the swinging span when the anchor was cast?

A. Like this (indicating).

Q. That would be across the stream?

A. Yes sir.

Q. Which part of the vessel was closer to the bridge the bow or the stern of the boat, when the bridge opened?

A. Closest to the bridge?

Q. Yes.

A. I suppose it would be amidships.

Q. If the bridge had been in a closed condition, which would have been closer to the bridge at the time that it opened, the bow of the vessel or the stern of the vessel.

A. The stern of the vessel.

Q. Did you observe the condition of the vessel when the anchor was cast?

A. Yes sir.

Q. Do you know the relative position of the vessel with the bridge as the bridge opened?

A. After the anchor was cast?

Q. Yes.

A. Yes sir.

Q. State whether or not the stern of the boat followed in after the bridge as it opened?

A. It did.

Q. State just how the vessel struck the bridge, what part?

A. I was standing about four feet from it. It struck the cross-beam of the bridge over the pier. It struck it, and then she tightened up at the same time, and cleared with a swing, swung right
486 in through.

Q. Tightened up on what?

A. On the anchor. Heaved and backed at the same time, I suppose.

Q. On the anchor?

A. Yes.

Q. Was the vessel backing at the time that she swung in against the bridge?

A. There was a terrible tide. As to that I could not say, that he was backing her at the time that he struck her.

Q. The vessel had backed about how far, what portion of the vessel had backed into the opening before the collision?

A. Collision? Well taking it in line, it would be about like this (indicating) struck the bridge.

Q. What portion of the vessel was within the opening when it struck the bridge?

A. It struck about midships, I suppose you would say one-half.

Q. One-half of the length of the vessel?

A. On an angle of about forty-five degrees, something like that.

Q. Then the vessel was, when it struck the bridge, was at an angle with the bridge of about forty-five degrees?

A. Yes, approximately, of course pretty hard to get angles down, only approximately.

Q. Do you know what brought the vessel from the bridge, or relieved it?

A. The tension of the chain. Backed her to port free and clear of the draw. It swung clear of the bridge and backed right in.

Q. Did you hear the captain give orders?

A. I did.

Q. What, if any, orders did he give, if you remember, at the time the bridge closed?

87 A. He told the mate to get the anchor ready.

Q. That is all that he said?

A. That is all that I remember.

Q. Are you acquainted with the signals and directions aboard vessels? Do you understand their code of signals and commands?

A. Why, that is ordinary talk I understand some. I cannot steer a boat.

Q. Did you observe whether the bridge opened rapidly or slowly when it did finally open?

A. It opened slowly, of course I do not know the velocity.

Q. About as long as it takes to turn a bridge ordinarily?

A. I could not say. It looked slow to me. Everything was excitement, and all looked for a kind of a smash somewhere.

Q. Were the parties on board of the vessel excited?

A. Not a bit. I never saw a much collar man, with the commands that he gave.

Q. I do not mean the captain himself, but those that were aboard of the vessel?

A. No nobody, was excited.

Cross-examination by Mr. HOGAN:

Q. Los Angeles is your home, Mr. Schwartz?

A. Yes I make that my headquarters.

Q. What is your business?

A. Mining.

Q. What companies are you interested in at the present time?

A. None at the present time I just came in from the Pyute Mountains.

Q. When did you come in from there?

A. Well, I just came in from there and went down to see my sister and I met him the day before I sailed and I saw the captain and I came through and that is why I happened to come up this time.

488 Q. You come up to have your deposition taken in the case?

A. Yes sir.

Q. That is you came in from that mine to Los Angeles and there you met the captain and he asked you to have your testimony in this case taken?

A. He asked me what I was doing and I told him nothing and that I wouldn't be doing anything for about two weeks then I was going to Oxicca Mexico.

Q. So you made the trip up on the Norwood to give your testimony here?

A. Yes sir.

Q. You are going back on the Norwood?

A. Yes sir.

Q. When did you come up here before?

A. On the 7th of May.

Q. What was your business on that trip?

A. I was going over to Wenatchee and when I got here I received a letter and I wired that I would go back.

Q. Did you go back on the Norwood?

A. Yes I went back to Providence Mine.

Q. You came up on the Norwood and returned on the Norwood on the same trip?

A. Yes.

Q. Did you stay aboard the Norwood while she was loading in Aberdeen in May?

A. Yes sir.

Q. Have your meals aboard?

A. Yes sir.

Q. Did you do any work?

A. No sir.

489 Q. Did you get free passage back on the Norwood?

A. Yes sir if I paid for it.

Q. Did you pay for it or did you get it free in May, From Aberdeen to Los Angeles?

A. I paid for it.

Q. Had a regular passenger's ticket?

A. Yes sir.

Q. Regular rate?

A. I paid for the passage.

Q. How much did you pay for it?

A. I might say I got the ticket practically given to me.

Q. Since coming to Aberdeen on this trip you have been up to look at this bridge have you not?

A. I saw the bridge yes.

Q. You have looked over the location again to refresh your recollections?

A. I have not been up to the bridge, no nor to see it.

Q. You say you haven't seen the bridge this trip?

A. What I know is just as I saw it that time.

Q. You sat in this room when the deposition of William Anderson and the last witness were taken?

A. Yes, I was part of the time.

Q. You heard his testimony in regard to this case?

A. I did not. I didn't take notice as to what he was saying.

Q. You were sitting here within a few feet of him were you not, while his testimony was being taken?

A. I was not interested in his evidence whatever.

Q. This Black Jack that you mentioned is known, his great name, is Captain Wierschuleit, Captain of the John C. Meyer?

490 A. Yes sir some name like that.

Q. When did you come to town this trip? When did the Norwood arrive?

A. The 19th of this month.

Q. And she has been on the harbor ever since?

A. Yes sir.

Q. What mill is she loading at?

A. The farthest mill up.

Q. In Hoquiam?

A. Yes sir.

Q. Now since coming to town you read the deposition of Captain Wierschuleit did you not?

A. No sir.

Q. You heard it read?

A. No sir.

Q. What depositions have you read, or heard read?

A. I have not read or heard any read.

Q. You have not heard any?

A. No sir.

Q. Did you read any court papers pertaining to this case?

A. No sir none whatever.

Q. On the 7th of May, when the Norwood came into Grays Harbor what wharf did she first stop at?

A. The city wharf, that is what they told me, I don't know.

Q. In Aberdeen?

A. Yes sir.

Q. What time of day did she tie up at that wharf?

A. Ten or half past ten.

Q. What time of the day was it that she whistled for the bridge and threw her lines from the wharf?

A. About eleven o'clock as near as I remember.

491 Q. Now Mr. Schwartz what first called your attention to the fact that the north end of the bridge had started to open up stream and then stop and come back into position?

A. Because I thought it was funny proceedings for a swinging bridge to take, I saw several of them and never saw one to act like that one did before.

Q. You are positive that is the case?

A. Yes sir.

Q. Captain Wierschuleit was on the bridge of the boat with Captain Martin?

A. Yes sir.

Q. He was in as good a position to observe as you were was he?

A. I guess he was every bit.

Q. And did you notice whether he and the Captain Martin were looking at the bridge?

A. I didn't take notice but a man can't very likely get out of that and say that they were not.

Q. If Captain Wierschuleit or Black Jack should say that the north end of the bridge didn't move up stream and then back into position close again, would that shake your belief?

A. I don't care what he says.

Q. How far did it open?

A. I could not tell how far it opened or the distance.

Q. How far did it open?

A. Maybe five feet or maybe twenty. I could not get a survey of it.

Q. Could it have been over twenty feet?

A. It might have been but I didn't notice, I could not tell.

492 Q. Could it have been less than five feet?

A. I don't think so.

Q. How far from the bridge were you when it opened this five feet. How many feet were you from the bridge when it occurred.

A. Well when she first started the first time it was about, I suppose it was six or seven hundred feet.

Q. When was that occurrence with reference to the second whistle for the bridge?

A. Well when he whistled the second time that is when he started to go through.

Q. That is when the bridge, you might say, went back?

A. Yes sir.

Q. Which occurred first the second whistle or this false movement of the bridge?

A. He whistled the second time and the false motion of the bridge started immediately, and then he had to change his course.

Q. Did any one make any comments on that action of the bridge? in the opening part of the way and then closing?

A. I heard nothing whatever.

Q. Did any one make any comments on that action of the bridge?

A. Yes, they thought they might have proper signals or something.

Q. Did any one make any remarks on the false motion on the part of the bridge while you were aboard that day?

A. Not that I know of.

Q. Just general discussion?

A. Yes sir.

Q. You are sure that the bridge opened finally with the south end up stream?

A. Yes the south end up stream.

Q. The final opening?

493 A. Yes sir.

Q. How far was the captain from the south pier, I mean how far was the Norwood from the west end of the long resting pier in the center of the river when he changed his course to the south?

A. He had, I suppose about three hundred feet.

Q. He was three hundred feet down stream from the lower end of the resting pier?

A. Yes sir.

Q. That is the time that you saw the man waving the flag on the bridge?

A. Yes sir.

Q. And that is the time that the bridge began to open with the south end up stream?

A. Not until he was pretty well headed across.

Q. How far from that point had he moved, that is the point at which he changed his course to the south before the south end of the bridge began to open up stream?

A. Well, I could not say, she was almost on the mud bank when she began to open or on it I don't know which.

Q. When you saw the man waving the flag there, how far were you from the man?

A. Well I suppose three hundred feet or four hundred feet, I could not tell you just exactly, from two to four hundred feet.

Q. From two to four hundred feet?

A. Yes sir.

Q. Was that a man or a boy?

A. Well I could not say whether it was a man or a boy because he was right against a timber or something and I could just make the flag out and that was all.

Q. And you could not tell whether it was a man or boy?

494 A. No.

Q. You say you saw this man walking out of the house on the bridge?

A. I saw him run out and past the house and I seen him shove that flag out and then I saw the vessel change its course.

Q. You say you saw him running out and waving the flag?

A. Yes sir.

Q. How far did you seen him running?

Q. Quite a little ways, a little ways past the house maybe a hundred feet.

Q. And you were two to four hundred feet from him and yet you

could not tell whether he was a man or a boy, he was not behind any timbers or beams at that time?

A. Yes he was in plain view.

Q. You could not tell whether he was a man or boy?

A. No I could not tell whether he was a man or boy.

Q. You could tell whether he had a beard or not couldn't you?

A. No I didn't take notice whether he had a beard or not my attention was called to the flag, and not to the person.

Q. Do you know how much water the Norwood draw- when she is empty?

A. I do not know.

Q. What makes you say that she was on the mud banks?

A. I noticed when I was over there that the tide went out and left nothing but the mud banks.

Q. You saw them throw out the anchor?

A. Yes sir.

Q. They threw out the anchor on the side of the vessel that you were standing on?

A. Just what side I could not say.

Q. Which side of the vessel were you on?

A. On the right hand side and when she began to swing I
495 walked over and was standing right there when she hit the bridge.

Q. How much anchor chain did she put out?

A. I could not say.

Q. Could you form any idea?

A. I have no idea whatever.

Q. Did you see them drop the anchor?

A. Yes sir.

Q. Did the bridge move right along when it started to open?

A. Yes sir.

Q. There was no hitch whatever?

A. I noticed none.

Q. How long a time elapsed between the time when the Norwood first whistled for the bridge and *three* off her lines at the wharf until they threw out the anchor up near the pier of the bridge?

A. Well it was but a very few minutes it seems to me that the way the tide and wind was running it was flood tide.

Q. How many minutes?

A. I could not say as to the minutes.

Q. What could you estimate it at?

A. Well if it was a thousand feet under slow bell and the way the tide was running in it must have been a minute or two anyway.

Q. A minute or two?

A. I should judge, I couldn't say for sure.

Q. From the time she left the "G" street wharf what was the time elapsed in leaving that wharf and the throwing out of the anchor?

A. A few minutes.

Q. How many minutes, it may be material?

A. I should say eight minutes.

Q. Eight minutes?

A. Yes sir.

496 Q. Was the vessel well under control during all the time?

A. She appeared to be as far as I know.

Redirect examination by Mr. CROSS:

Q. This matter of time is matter of guess work with you is it?

A. Merely guess work with me. I have no idea how long it takes the tide and wind the way it runs the rate it would go, I was paying attention to the bridge.

Q. Do you know how long she stopped at the time she blew her second whistle?

A. The tide running in I could not tell what, she didn't seem to be going ahead but seemed to lose the headway that she had, the tide was carrying her along very rapidly.

Q. She stopped two minutes when she blew her second whistle? Stopped still?

A. Well, the engine stopped working, I should judge that she lost headway.

Recross-examination by Mr. HOGAN:

Q. And what was the bridge doing?

A. I suppose they were working with that.

Q. What were they doing during these two minutes?

A. Well when I say two minutes I have reference to lapse of time. And the bridge started to open.

Q. You said that you were six or eight hundred feet from the bridge you would not call that put positive would you?

A. When the bridge started to open up he started and thought he could make it all right and just got headway and she closed on him.

Q. What was the bridge doing during these two minutes?

A. I could not say as to that.

Q. What man did you see on the bridge?

497 A. I saw them on one end, I wasn't paying much attention I was there apparently making observation.

Q. You say your testimony in regard to time is mere guess work? in regard to the features of time is merely guess work?

A. The time in everything in close succession and is hard to space time.

Q. You think there is no guess work about measuring as there is about time?

A. In close continuation of one little instance after another.

That is all. That is all.

498 In the Superior Court of the State of Washington in and for
Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys of record herein that the deposition of May M. Dickey, a witness produced on behalf of defendants may be taken at the office of J. C. Cross, in the city of Aberdeen, Chehalis county, Washington, and before E. E. Shields, a notary public, on the 23rd day of October, 1906, commencing at the hour of nine o'clock A. M. of said day, and continuing from day to day until completed; and that the deposition when so taken shall have the same force and effect as if taken upon notice duly and regularly given therefor.

That the plaintiff herein waives any and all formal notice for the taking of said deposition, and any and all irregularities relating to the taking of said deposition are hereby waived, the said plaintiff and the said defendants reserving to themselves the right to object and except to the materiality and sufficiency and relevancy of any portion of said deposition or testimony, as to them or either of them, may seem right and proper; and such objections or exceptions may be urged for the first time by either of the parties hereto, when the said deposition shall be offered or read in evidence. The reading and signing by the witness of the transcribed shorthand notes
499 is waived.

In witness whereof the parties hereto, through their respective attorneys, sign this stipulation in duplicate, this the 23rd day of October, A. D. 1906.

J. C. CROSS,

Of Attorney- for Defendants.

JOHN C. HOGAN,

Attorney for Plaintiff.

500 In the Superior Court of Washington in and for Chehalis
County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Certificate and Return.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 23rd day of October, 1906, at the office of J. C. Cross, at the city of Aberdeen, Chehalis county,

Washington, at the hour of nine o'clock of that day, pursuant to the stipulation hereunto attached and made a part of this certificate and return, there being present the plaintiff in person, and his attorney of record, J. C. Hogan, Esq., and the defendants by their attorney J. C. Cross, there appeared before me May M. Dickey, a witness produced on behalf of defendants, who being by me first duly sworn to testify to the truth, to the whole truth and nothing else but the truth in answer to such interrogatories as might be propounded to him as such witness, gave testimony as shown by this deposition, and the said deposition has been carefully read by me; that the reading of the said deposition has been carefully read by me that the reading of said deposition to the said witness in his presence and in my presence and the signing of the said deposition by the said witness was in my presence, and in accordance with the stipulation, hereunto attached waived by the parties hereto.

In witness whereof I have hereunto set my hand and official seal this the — day of October, A. D. 1906.

E. E. SHIELDS,

*Notary Public in and for the State of Washington,
Residing at Aberdeen, in This State.*

502 In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Deposition of May M. Dickey.

MAY M. DICKEY, a witness produced on behalf of the defendants, being first duly sworn to testify to the truth, the whole truth and nothing else but the truth, was interrogated and testified as follows, to-wit:

Direct examination by Mr. Cross:

Q. Give your name and age?

A. May M. Dickey, age thirty-one years.

Q. Were you on board the Norwood on the 7th of May, 1906?

A. Yes sir.

Q. What position were you filling on the vessel at that time?

A. I was first assistant engineer.

Q. Do you know who had charge of the engines on that vessel on the 7th of May, while making the trip from the "G" street dock to the mill above the bridge?

A. I had charge of the engines. I was at the throttle.

Q. Who received the signals from the captain of the vessel at that time?

A. I received them.

Q. State if you know what signals were given, what signals received on leaving the "G" street wharf?

503 A. The first signal that I got was "astern slow", which I answered.

Q. Then what?

A. Just a short space of time I received a signal to "stop", and a short time afterward, I received another signal "ahead slow."

Q. Did you comply with these several signals?

A. I did, yes sir, I answered them back to the bridge by telegraph.

Q. Do you know who was captain, then master of the vessel Norwood?

A. Captain Martin was supposed to be, but whether he was or not, I do not know. I was in the engine room.

Q. Do you know what your next signals were?

A. After I went "ahead slow," for a short space of time, I got another bell to "stop."

Q. Did you answer it?

A. I answered it. Just a short time afterwards, I got a "full speed astern."

Q. Do you know where you were when you got the signal to "stop?" as between the bridge and the wharf? from where you started?

A. No sir I do not know.

Q. From your position aboard the vessel, could you tell where you were on your course?

A. No sir.

Q. During your course from the wharf to the mill, did you know when you passed through the bridge?

A. No sir.

Q. Do you know how your vessel went through the bridge? Whether she went bow forward or astern?

A. No sir I could not say.

Q. Was there anything occurred on making the course
504 from the wharf to the wharf of the mill company that attracted your attention?

A. Nothing more than a slight noise that I heard. There was no jar or anything.

Q. What character of noise?

A. Sounded like the breaking of boards, or something of that kind. It sounded something like there might have been a joint blown out over the boilers. It stopped at once, and then I knew that there was nothing like that.

Q. Did you learn afterward what made that noise?

A. Not until I went up stairs and alongside of the deck, then I saw the side of the ship was broken in, at the Aberdeen mill. Lumber & Shingle mill.

Q. What was the breaking that you observed?

A. Well, there were four or five planks on the side of the house that were broken in; that is as near as I could say, four or five I suppose it was, I never counted them.

Q. Do you know when the vessel struck the bridge?

A. No sir, I do not know when she struck the bridge.

Q. Did you feel any jar or vibration in making that course?

A. Not in the engine room where I was standing, I did not feel anything.

Q. State whether or not it is noticeable when the vessel itself strikes anything stationary with any degree of force?

A. Always notice it in the engine room.

Q. If she goes up to the dock pretty hard, when you are making a dock?

A. Always notice it there.

Q. What are the effects that you notice?

A. Just a jar, and the shaking of some of the pipes, or something of that kind.

505 Cross-examination by Mr. HOGAN:

Q. You judge that at the time that you heard the squeaking noise, like boards breaking, that that was the time that the boat struck against the bridge?

A. After I came up, and they told me that she had hit the bridge, then I thought she must have struck the bridge at that time.

Q. You fix that time now probably as the time that that vessel hit the bridge?

A. Yes sir.

Q. What was that the time that you got the bell for "full speed astern?"

A. The signal was a little before that. The engine was working, but which way the engine was going, I do not know, whether ahead or astern.

Q. When was it with reference to when you heard the squeaking noise that you got the signal for "full speed astern?"

A. The engine was working full speed when I heard this noise.

Q. Then it must have been before that that you got the bell?

A. Yes sir.

Witness excused.

506 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys of record herein that the deposition of William Anderson, a witness produced on behalf of defendants may be taken at the office of J. C. Cross in the City of Aberdeen, Chehalis County, Washington,

and before E. E. Shields, a notary public, on the 23rd day of October, 1906, commencing at the hour of nine o'clock A. M. of said day and continuing from day to day until completed; and that the deposition when so taken shall have the same force and effect as if taken upon notice duly and regularly given therefor.

That the plaintiff herein waives any and all formal notice for the taking of the said deposition and any and all irregularities relating to the taking of the said deposition are hereby waived; the said plaintiff and the said defendants reserving to themselves the right to object and except to the materiality and sufficiency and relevancy of any portion of said deposition or testimony as to them or either of them may seem right and proper; and such objections or exceptions may be urged from the first time by either of the parties hereto when the said deposition shall be offered or read in evidence.

The reading and signing by the witness of the transcribed short hand notes —.

507 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Return and Certificate.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 23rd day of October, 1906, at the office of J. C. Cross, at the city of Aberdeen, Chehalis county, Washington, at the hour of nine o'clock of that day, pursuant to the stipulation hereunto attached and made a part of this certificate and return, there being present the plaintiff in person and his attorneys of record, J. C. Cross, Esq., and the defendants by their attorney, J. C. Cross, there appeared before me, William Anderson, a witness produced on behalf of defendants, who being by me first duly sworn to testify to the truth, to the whole truth and nothing else but the truth in answer to such interogaories as might be propounded to him as such witness, gave testimony as shown by this deposition, and the said deposition has been carefully read by me; that the reading of the said deposition to the said witness in his presence and in my presence and the signing of the said deposition by the said witness was in my presence, and in accordance with the stipulation, hereunto attached, waived by the parties hereto.

In witness whereof I have hereunto set my hand and official seal this the — day of October, A. D. 1906.

E. E. SHIELDS,
Notary Public in and for the State of Washington.
Residing at Aberdeen, in said State.

08 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Deposition of William Anderson.

WILLIAM ANDERSON a witness produced on behalf of the defendants being first duly sworn to testify to the truth the whole truth and nothing else but the truth was interrogated and testified as follows, to-wit:

Q. What is your age Mr. Anderson?

A. 24 years.

Q. Where do you live?

A. San Francisco.

Q. Are you acquainted with the steamer Norwood?

A. Yes sir.

Q. Do you occupy any position on that steamer?

A. Seaman.

Q. How long have you been a seaman?

A. Seven years.

Q. How long have you been a seaman on the steamer Norwood?

A. Seven months, 6 or 7 months.

Q. Were you a seaman on board the Norwood on the 7th of May, 1908?

A. Yes sir.

Q. Where was the steamer at that time?

A. Aberdeen.

Q. What part of the work as a seaman were you performing that day?

9 A. We came into port, into Grays harbor that day and discharged freight down to the Harbor dock.

Q. What particular work, if any, were you doing?

A. We were discharging freight in the forenoon about ten o'clock the harf at the Harbor dock.

Q. What time did the vessel come into port?

A. About ten o'clock in the forenoon.

Q. What time was it about, when was it when you got the freight discharged?

A. 10:30 or something like that, I could not say exactly, about 10 past ten.

Q. Were you acquainted with Captain Martin?

A. Yes sir.

Q. How long have you known him?

A. I have known him for a couple of years.

Q. Did you see him while you were discharging freight?

A. He was around the hatch and was on deck measuring chain hing.

Q. Did you observe the passengers go from aboard that morning, come ashore?

A. Yes sir I saw them come ashore except one and she was sick, a woman passenger.

Q. A woman passenger?

A. Yes sir.

Q. You say she didn't go ashore?

A. The captain had to pack her ashore Captain Martin carried her.

Q. Captain Martin carried her ashore?

A. Yes sir, from the state room to the wharf.

Q. Where were you when the vessel let go at the wharf?

A. I was at the wheel.

510 Q. What part of the vessel is the wheel on, forward or aft?

A. On the pilot house in the fore part of the house.

Q. Where was the captain when you swung loose?

A. On the bridge.

Q. Where were you before or behind the captain?

A. Before the captain.

Q. How far is the captain from where you were, how far is the bridge from the pilot house?

A. The bridge is about seven feet before the pilot house about six feet above the pilot house.

Q. And the captain was kind of over how then?

A. About six feet aft.

Q. Could you hear what he said, could you hear anything he would say, in giving orders?

A. Yes he gave orders to me.

Q. The question is could you hear anything in relation to him giving orders?

A. Yes I could hear him.

Q. Giving orders?

A. Yes sir, he was standing over here like.

Q. Did you hear him give any signals when he swung loose from the wharf, from the "G" street dock?

A. Yes he blew the whistle.

Q. What was the signal?

A. One long and three short whistles.

Q. What did that whistle mean if you know?

A. That means to open the bridge.

Q. Did you know where the vessel was intending to go, when it left the "G" street wharf?

A. Yes sir.

511 Q. Where?

A. The same place she was before, the Western mill.

Q. Do you know the name of the mill?

A. No sir.

Q. Was it a mill before or below the bridge?

A. Before the bridge.

Q. What direction did the vessel take when she let go at the "G" street wharf?

- A. She headed up stream to the bridge.
- Q. How was she moving as to speed?
- A. She was keeping steerage way, slow speed, when she left the wharf, enough to steer.
- Q. Enough to steer is that what you mean?
- A. Yes sir.
- Q. Was there any one else at the wheel besides you?
- A. Yes another fellow.
- Q. Do you know his name?
- A. Yes his name is Olaf, that is all I know by him by.
- Q. Do you know where he is now?
- A. Yes sir down in Australia.
- Q. Did you see the bridge when you left the "G" street wharf?
- A. Yes sir.
- Q. How was it opened or closed?
- A. Closed.
- Q. Where were you at the wheel from the time she left the wharf until she made her landing at the mill wharf above the bridge?
- A. Yes sir.
- Q. Were there any whistles blown from the time she left the "G" street wharf, until she got to the bridge?
- A. Yes sir about half ways between the wharf and the bridge.
- 2 Q. About half ways?
- A. Yes sir.
- Q. What were those whistles?
- A. One long and three short whistles.
- Q. Did you observe the bridge at that time?
- A. Yes it was starting to move open.
- Q. Starting to move open?
- A. Yes sir.
- Q. What, if any, orders did you get between the first and the second whistles?
- A. I was keeping her straight course.
- Q. Do you know which side of the bridge he was intending to pass through?
- A. Yes he was heading for the north side, the left hand side.
- Q. The left hand?
- A. Yes.
- Q. What if anything did you observe, about the bridge after the second whistles were blown?
- A. The bridge opened part way.
- Q. Do you know which way it started to open?
- A. It opened up the stream up the river.
- Q. Up the river?
- A. Yes sir.
- Q. Well here is a photograph, do you recognize the bridge from that photograph?
- A. Yes sir.
- Q. Do you know which is the swinging span and which is stationary?

A. Yes sir.

Q. Do you recognize the position the bridge was in, from
513 that Photograph?

A. Yes sir.

Q. Do you know which is the swinging span and which is stationary?

A. Yes sir.

Q. Do you recognize the position the bridge was in, from that photograph, when you first saw it?

A. The same as it is here.

Q. Same as on the picture?

A. Yes sir.

Q. How was she when she whistled the second time?

A. She swung that way (indicating on the photograph).

Mr. CROSS: We would ask that the photograph be identified as plaintiff's identification one in this testimony.

Q. Now will you make a little cross mark at the end of the bridge that you say swung up the river, when she first opened?

A. Yes sir. (Indicates and marks on the photograph.)

Q. What if anything did the vessel do after the second whistles?

A. Well she practically came to a standstill at the second whistles.

Q. Then what did they do.

A. The bridge commenced to open she was going ahead again after the bridge commenced to open.

Q. From where you were could you see about how far the bridge opened, were you watching the bridge?

A. I was watching the bridge about 10 or 15 feet, or something like that I am not sure.

Q. What, if anything did the bridge do after that?

A. It swung back again the same way and it was before it started to swing.

Q. Closed up?

514 A. Close- up yes it came back the same way, this way or swung back again.

Q. What if anything did the captain do when the bridge came back?

A. He ordered helm hard at port?

Q. He ordered helm hard at port?

A. Yes sir.

Q. What did you do?

A. I put the helm hard at port.

Q. How far were you from the bridge when——

A. Two or three hundred feet, I think.

Q. Two or three hundred feet?

A. Yes sir.

Q. In what direction did that send the vessel when you pulled her hard at port?

A. Starboard, to the right hand.

Q. Did you observe what the bridge did while you were holding the vessel across the stream?

A. It came back, swinging that way and opened to the other de. (Indicates.)

Q. That is the hand where you marked the cross, swung first up the stream?

A. Yes sir up the stream.

Q. Then which way?

A. The same and came down the stream.

Q. Where was the vessel when the bridge finally opened?

A. The vessel was laying — anchor in the stream.

Q. In the stream?

A. Yes sir.

Q. How was she standing as to her bow up or down the stream?

15 A. Part down, heading down the stream.

Q. Now could you tell from looking at this picture about here the vessel was? Could you take a pencil and mark about the course she took and about where she was standing when the bridge opened?

A. Yes sir.

Q. As nearly as you can.

(Indicated with pencil.)

Q. Where was the stern of the vessel when the anchor was cast?

A. While the stern was heading this way.

Q. You mean toward the bridge?

A. I could not say exactly as to the stern, I was in the wheel house and could not see the stern.

Q. Did you hear the captain give any orders as to the anchor?

A. Yes sir.

Q. What did he say?

A. He told the chief to let go of the anchor.

Q. Which anchor did he cast?

A. The starboard anchor.

Q. Did the anchor take hold?

A. I don't think so there was strong wind and tide, she drifted with the anchor a little, drug the anchor.

Q. Drug the anchor?

A. Yes sir.

Q. How did she go through the bridge?

A. She came stern first.

Q. Went through stern first?

A. Yes with stern first.

Q. Were you watching to see what position the vessel was in relative to the stationary span of the bridge, this other span over there?

A. I didn't watch it.

16 Q. Do you know how the vessel struck the bridge?

A. The swinging span opened with the south end up

ream.

Q. The stern of the vessel swung into the opening?

A. Yes into the opening.

Q. And struck the corner of the stationary span?

A. Yes it struck the planking on the alley way a little abaft of the midship.

Q. How did the vessel relieve herself from the bridge?

A. The captain backed the vessel was out and then haul- taut the chains or tightened the chain.

Q. Did the tightening of the chain swing the vessel away from the bridge?

A. Yes sir it cleared the bridge.

Q. Cleared the bridge?

A. Yes sir.

Q. Did you see any signals out or about the bridge?

A. Yes sir I seen the signals I seen the flag there once.

Q. Where was that?

A. On the bridge.

Q. On the south end of the bridge about here (indicating.)

Q. South end of the swinging span?

A. Yes half way to the south end.

Q. Just make a little circle where you saw the man with the flag.

A. (Indicated on the photograph.)

Q. Now we would have this marked plaintiffs' Exhibit I.

Q. How would you mark there Mr. Anderson just make a little arrow the direction where she finally opened on the south side.

A. The time she struck the bridge?

Q. The way that it finally opened.

517 A. (Indicated with arrow.)

Q. Where was the vessel when you first saw the flag?

A. I don't know the distance a couple of hundred feet.

Q. State whether or not you observed the flag before or after the bridge began to open?

A. I only saw the flag once, and that time the bridge swung back I did not notice the flag before.

Q. You didn't notice the flag before the bridge moved or came back?

A. No.

Q. How was the flag displayed on the bridge or in some one's hand?

A. In some one's hand, some on- was standing there on the bridge.

Cross-examination by Mr. HOGAN:

Q. What time did you get into port that time, Mr. Anderson?

A. About ten o'clock.

Q. What time was it you whistled the first time for the bridge to open?

A. It was half past ten or something like that.

Q. How long did it take you to run from the wharf where you cast off your line to where you cast anchor near the bridge?

A. I could not tell the time.

Q. How many minutes did you consume in making that run from the wharf to where you cast your anchor?

A. I do not know the distance between the wharf and where we cast anchor.

Q. Now the question is, how long a time did it take to go from the wharf, where you first whistled for the bridge, to the point where you cast out your anchor?

A. I could not tell you, I do not know how long a time it was.

Q. Would you say that it took one half an hour?

A. I am not sure.

Q. What would be your judgment as to the time it took?

A. I could not tell. Forty minutes or something like that. I am not sure of it.

Q. You would estimate that time as forty minutes?

A. Yes sir.

Q. Now when you started out from the wharf after whistling for the bridge there were two of you at the wheel?

A. Yes.

Q. Yourself and a man named Olof?

A. Yes.

Q. And you say Olof is in Australia?

A. Yes.

Q. When did you last see him?

A. This spring, he shipped on board the steamer J. B. Stetson, he shipped in a sailing vessel going to Australia.

Q. You two were in the pilot house, you and Olof?

A. Yes.

Q. Was there anybody else in the pilot house?

A. No sir.

Q. Do you know whether anybody else was in the pilot house at any time while you were making that run from the wharf to the mill?

A. Not that time, only us two.

Q. Captain Martin was on the bridge?

A. Yes sir.

Q. Was there anybody else on the bridge with Captain Martin?

A. Another man, a captain on one of the vessels, the John C. Meyer I think was the name of the vessel.

Q. You say that Captain Martin was on the bridge, and with him as the captain of the John C. Meyer, is that your answer?

A. Not that I saw.

Q. Did you say—did you see anybody else on the deck of the vessel during that run?

A. The crew were forward.

Q. Who were the members of the crew?

A. Seven or eight altogether.

Q. Eight including yourself. From that eight men including yourself?

A. Yes sir.

Q. Do you know their names?

A. Some of them I do; some of them I have forgotten their names.

Q. Give the names of those you know?

A. Nels Westburg.

Q. What was his position?

A. After wench driver.

Q. Who else?

A. A fellow named Martin.

Q. What was his position?

A. Port wench driver.

Q. Who else?

A. I cannot remember their names at the present time; they stayed on the steamer for a trip, for a few days, and then they go again, I cannot tell who the rest were.

Q. Were there any passengers on board?

A. I do not know whether any passengers on board at that time or not.

Q. How many men composing that crew at that time are on the vessel now?

A. Only myself.

Q. Only you of all that were there then?

A. Yes sir.

Q. Where are the others?

520 A. I do not know where the others are just now—one in Australia.

Q. You are still working aboard of the Norwood?

A. At the present time.

Q. At the present time?

A. Yes sir.

Q. You have been with her ever since the accident?

A. No sir.

Q. When did you quit the Norwood after this trip on the 7th of May?

A. Went down south and back to San Francisco, and left her then.

Q. Left her then, when did you come back to her?

A. Third of September.

Q. You have been with her since the third of September?

A. Yes sir.

Q. And you say that there are none of that crew except yourself?

A. No sir.

Q. Aboard of the Norwood at the present time?

A. No sir, all of the sailors.

Q. Are there any of the officers besides the engineer with her?

A. No sir.

Q. None of them are there now?

A. Not in the deck department.

Q. How far were you from the bridge when you blew the second whistle for the bridge?

A. Half ways between the bridge and the wharf.

- Q. How far would that be from the bridge?
A. I don't know, have no estimation at all; I could not tell. The distance between that.
- Q. Could you estimate the distance?
A. No sir, I could not estimate the distance.
- 21 Q. Would you say a thousand or fifteen hundred feet?
A. No sir, I could not say — thing about it.
- Q. Was it more than one hundred feet?
A. Yes.
- Q. How much more?
A. Seven or eight hundred feet.
- Q. Seven or eight hundred feet?
A. Yes sir.
- Q. How far were you from the wharf where you left when you blew the second whistle?
A. Seven or eight hundred feet.
- Q. When you blew the second whistle and were seven or eight hundred feet from the bridge you were headed towards the north end of the bridge?
A. Yes sir.
- Q. And the bridge at that time you blew the second whistle had not started to open at all up to that time?
A. No sir.
- Q. Had not started to move at all?
A. No sir.
- Q. How many feet ahead did the vessel move after blowing the second whistle before the bridge started to open?
A. I could not tell you exactly.
- Q. Would you say that it had moved one hundred feet after blowing the second whistle before the bridge started to move at all?
A. The bridge started to open immediately after blowing the second whistle.
- Q. The bridge started to open immediately after the blowing the second whistle?
A. Yes sir.
- Q. Now if the bridge had continued to open as she started to open after you blew the second whistle, and you had continued your course with the vessel, you would have made the opening on the north side without any trouble?
A. Yes sir.
- Q. There was plenty of time for that?
A. Yes sir.
- Q. How far forward did the vessel move after blowing the second whistle before the bridge started to swing shut again?
A. Three or four hundred feet.
- Q. Three or four hundred feet?
A. Yes.
- Q. How far were you from the bridge when you started to change course of the vessel?
A. Two or three hundred feet.

Q. You mean by that that the bow of the vessel was two or three hundred feet from the pier of the bridge or the bridge?

A. From the bridge running across.

Q. And where were you when you started to change your course? With reference to the swinging pier on which the span of the bridge rests?

A. I cannot tell; I cannot tell anything about that.

Q. Did you see the swinging pier of the bridge at the time you changed the course of the vessel?

A. The swing pier is in the middle of the bridge.

Q. I mean by the swinging pier the long resting pier on which the bridge rests when it is swung open. Up and down the river.

A. Yes, I could see that.

Q. How far were you from the lower end of that when you changed the course of the vessel?

523 A. About two hundred feet.

Q. About two hundred feet?

A. No sir, about two hundred feet or something like that.

Q. You were two hundred feet down stream from the lower end of that resting pier of the bridge?

A. Something like that; I could not tell exactly.

Q. But that is your judgment.

A. Yes sir.

Q. On which side of the pier were you, north or south?

A. A little to the north.

Q. At what rate of speed was the vessel going at that time?

A. Just going slowly ahead.

Q. How many miles an hour was she making?

A. I could not tell.

Q. Could you form any estimate of the speed that she was making?

A. No sir, because the tide was strong, and the wind was blowing pretty strong, so that I cannot tell how fast she was going. There was a strong wind and a strong tide.

Q. Did you take any notice at that time of the speed that she was making?

A. Of the speed she was going slow ahead?

Q. What do you call slow ahead?

A. A vessel going ahead slow.

Q. Going at that rate, how long would it take her to go five mile?

A. In smooth water?

Q. Yes, as they were going, the was she was?

A. I could not tell, too strong a tide, and a strong wind. In smooth water it would take about one and one quarter of an hour.

Q. About an hour and a quarter to go five miles?

A. Smooth water and without any wind or tide.

524 Q. Taking conditions as they were at that time, and going at the speed the vessel was going, how long would it take the vessel to make five miles at the speed she was going?

A. I could not tell.

Q. You cannot tell?

A. No sir.

Q. Why did you blow the second whistle?

A. Where?

Q. Why?

A. Because the bridge did not open on the first whistle.

Q. Who blew the whistle?

A. The captain.

Q. The captain?

A. Yes sir.

Q. You were looking at the bridge at the time the second whistle blew?

A. Yes sir.

Q. Did you see any flag at that time?

A. No sir.

Q. You did not?

A. I did not notice any flag.

Q. Did not look?

A. I was looking at the bridge; I was looking at the opening.

Q. Looking at the opening?

A. Kept the vessel straight for the passage through there?

Q. You didn't see any flag before that?

A. No sir.

Q. If there had been a flag out there you would have seen it, would you?

525 A. I didn't take any notice of the flag, any particular notice of it.

Q. Where were you when you first saw the flag?

A. I was in the pilot house.

Q. Where was the ship?

A. The ship was a couple of hundred feet.

Q. A couple of hundred feet from the bridge?

A. From the bridge, a couple or three hundred feet from the bridge.

Q. And this flag was in a man's hand was it?

A. Yes.

Q. And had a staff on it, on a pole, and was waving it?

A. Yes sir.

Q. Did you recognize the man?

A. No sir, I was too far off to recognize the man.

Q. Was he a young man or an old man?

A. Why I could not tell; too far off, too far distant.

Q. You could not tell whether he was a light complected man or dark?

A. No sir.

Q. Did he have a beard?

A. I could not tell.

Q. You were too far off to tell these things, were you?

A. Yes sir.

Q. What sort of a flag was it?

A. A red flag.

Q. How big was it?

A. It looked to me like it was about foot and a half square.

Q. How long did this man wave this flag?

A. A couple or three times like that (indicating).

Q. What did he do with the flag then?

A. I took no particular notice of it after that time.

526 Q. You don't know or remember what he did with the flag?

A. No sir.

Q. Now you say the span of the bridge which way did the bridge open, for the vessel to go through, when she finally went through?

A. Which way she opened?

Q. I will ask you to state which way did the south end of the bridge open?

A. Up the stream.

Q. The south end of the bridge moved up the stream?

A. Yes sir.

Q. And the north end of the bridge moved down the stream?

A. Yes sir.

Q. Now when the bridge first started to move immediately after blowing the second whistle, you say the north end of the bridge moved in the northerly direction?

A. Moved up the river.

Q. Moved up the river?

A. Yes.

Q. And after moving up the river about twelve or fifteen feet?

A. Ten or fifteen feet.

Q. Ten or fifteen feet the north end of the bridge moved back and opened with the north end down stream?

A. Yes sir.

Q. How many minutes was it from the time you changed the course of the vessel to the time the captain ordered the anchor cast out?

A. I cannot remember.

Q. How many minutes in your judgment?

A. I cannot tell.

Q. Was it five or ten minutes?

527 A. I cannot tell anything about that. I was tending to the wheel during that time. I turned the wheel hard to port.

Q. Would you form any estimate of that time?

A. I could not give it certain.

Q. Where was the vessel when the north end of the bridge commenced to swing off of the pier towards the south?

A. Didn't swing to the south.

Q. To the west I mean.

A. Down the river.

Q. Yes, down the river.

A. What position the vessel was in?

Q. The question is, what position was the vessel in when the north end of the bridge commenced to swing down the river, and off the pier at this point in the picture where you have marked with the "X".

A. She was swinging to the starboard.

Q. Where was the vessel lying then?

A. She was turning, going hard to the port helm.

Q. Now indicate on this picture, when the bridge started to swing to the south, off her pier, where you have marked with letter "X" where was the vessel?

A. At the time that the vessel commenced to swing backward the north end of the bridge commenced to swing down the river.

Q. Yes.

A. The vessel was about here.

Q. Will you mark that with the figure "1" there with the pen?

A. All right sir (Witness marks).

Q. Then when the north end of the bridge commenced to move towards the west and left the supporting pier at the point marked on the picture with the letter "X", the vessel was in the position indicated with the letter "X", the vessel was in the position indicated by the figure "1" over the initials W. A. on this picture, was it?

A. Yes sir.

Q. And the vessel was then distant from the span of the bridge, or from the swinging pier on which the bridge rests, how many feet?

A. From the swinging pier of the bridge a couple of hundred feet.

Q. From the lower end of the swinging pier was two hundred feet? West of that a little north?

A. A little north.

Q. In the north channel?

A. Yes a little to the north.

Q. When the bridge started to move with the north end towards the west, did she move right along without any stop or halt?

A. She moved right along.

Q. She moved right along?

A. Yes sir.

Q. Did you notice how near open the bridge was, when you had changed your vessel around to the south and got immediately west, or amidship of the west end of the pier on which the bridge rests?

A. I could not tell how much the bridge was open.

Q. How much was the bridge open when you started to cast anchor?

A. I could not tell you how much it was open, I was in the pilot house and could not see the bridge.

Q. How much open was the bridge when you last saw it, when you were making the turn there?

A. I could not tell exactly how much she was open; she was swinging, and the bridge kept swinging with her. I could not tell how much she was open.

Q. Have you any impression in your mind now as to how much the bridge was open when you last saw the bridge, when you were making the curve to the south?

A. I could not tell how much that was.

Q. How many feet were you when you saw it moving off?

A. She was moving right along.

Q. Was she moving at good fair speed?

A. Yes, going pretty fast.

Q. Was it moving as fast as it ordinarily does, I mean the bridge?

A. I do not know.

Q. You don't know what ordinary speed is?

A. No.

Q. You say the bridge moved right along, and came pretty fast, when you last saw it?

A. Yes sir.

Q. When did you last see it between the time you last saw it, and the dropping of the anchor?

A. The vessel was swinging around this way (indicating) with the helm at "hard to port," I could not see anything for the vessel swinging.

Q. Now you saw the bridge, and saw it move, and saw it for the last time before casting the anchor?

A. Yes sir.

Q. Your attention was then drawn to your work and you did not observe the bridge?

A. Yes.

Q. You many feet did you say your turned from the time you last saw the bridge until you cast your anchor?

A. I could not say.

Q. Would you say two hundred feet?

A. I could not tell.

530 Q. Was it more than one hundred feet?

A. I could not tell anything about that.

Q. Was it a minute of time or five minutes of time?

A. I could not tell the time, I was paying attention to the wheel.

Q. When the captain called to cast the anchor, did he do that by a bell or by speaking?

A. By speaking.

Q. After casting out the anchor, did the captain give any other signal or order?

A. I did not hear any other orders.

Q. Did he give any order to back the vessel up?

A. No, she was backing at the time.

Q. She was backing at the time?

A. Yes sir.

Q. Before the anchor was cast?

A. She was going ahead at the time that the anchor was cast. After the anchor was cast she backed to tighten up the chain, after she had swung under the bridge.

Q. When did he give the order for "full speed backward," was that after?

A. I do not know, she was going "Full speed" after the anchor was cast.

Q. The propeller was driving her back after the anchor was cast?

A. Yes sir.

Q. You cannot say whether that was full speed or not?

A. No sir.

Q. What do you think about that?

A. I could not tell anything about.

Q. How far from the south pier of the bridge was the boat at the time she cast anchor—this pier that was damaged?

A. I could not tell you.

Q. Would you say that it was a hundred feet or two or three hundred feet?

A. I could not say as the vessel headed down the stream; I could not see.

Q. The vessel at the time was headed down the stream at the time she cast anchor, or practically so.

A. Practically so.

Q. And you could not tell how far she was from the bridge?

A. No sir.

Q. You would not make any estimate as to how far she was from the bridge?

A. No sir.

Q. Could you see the bridge from where you were in the pilot house when the anchor was cast?

A. No sir.

Q. You could not?

A. No sir.

Q. That would indicate that you had rounded a curve and practically got headed down stream?

A. Yes sir.

Q. Before the anchor was cast?

A. Yes sir.

Q. Was the vessel in good control, was the vessel in good control of her machinery?

A. Yes as far as I know.

Q. Everything working on board of the vessel all right?

A. Yes sir, seemed to.

Q. There was no time when the vessel got helpless?

A. No sir.

Q. About what time of day was it when you cast anchor? Or when the vessel came in contact with the pier of the bridge?

A. I could not tell exactly what time it was. It was in the forenoon.

Q. Did you see Mr. Schwartz on board of the vessel that day?

A. Yes sir.

Q. Was he on board at this time?

A. Yes he was on board.

Q. Was he working on board of the vessel?

A. No sir.

Q. Was he a passenger?

A. As far as I know he was a passenger.

Q. Where did he come from?

A. He came from San Pedro, I think it was San Pedro.

Q. Did he make a trip up with you the last trip?

A. At the time the accident happened.

Q. Did he come up on the last trip of the Norwood?

A. Yes sir.

Q. How many trips has he made on the vessel since the 7th of May?

A. That I don't know. I haven't been on board the vessel since this time but on-e.

Q. How many trips do you know of his making on the vessel?

A. This trip and the trip before.

Q. Are you personally acquainted with him?

A. No sir.

Redirect examination by Mr. Cross:

Q. When you say that there is no one on the vessel now that was not on the vessel at the time of the accident, what class of, or what part of the crew do you have reference to?

A. To the deck department, to the sailors.

533 Q. This engineer that is with you here is the engineer that was with her then?

A. Yes sir, I think there is two or three engineers.

Q. In your cross examination you state the vessel struck the pier of the bridge, what do you mean when you say the vessel struck the pier of the bridge?

A. She swung on the bridge, the corner of the bridge.

Q. Did the vessel hit the pier, that is the part that it rested on or the superstructure that was on top of the pier?

A. I could not tell what she struck, she struck the corner of the south span.

Q. Struck the corner of the south span?

A. Yes.

Recross-examination by Mr. HOGAN:

Q. What is the length of the swinging span of the bridge, the total length?

A. I do not know sir.

Q. What in your judgment is the length?

A. The swinging span.

Q. Yes.

A. 350 or 400 feet.

Redirect examination by Mr. Cross:

Q. That is just a guess on your part?

A. A guess, yes sir.

Recross-examination by Mr. HOGAN:

Q. You make that statement from your recollection when you saw it on that day?

A. Yes sir.

Witness excused.

34 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe, and Richard Roe, Defendants.

Certificate.

I, J. A. Cross, do hereby certify that I am a shorthand reporter of said county, and acted as such in the trial of the above entitled cause; that the annexed and foregoing shorthand report of evidence is a true, full and complete report of the evidence in said cause and contains, with the exhibits, records and documentary evidence, herein referred to and identified, all of the evidence offered, given or introduced in said cause by the respective parties upon the trial hereof; all of the objections and motions of the said parties thereto or any part thereof; all rulings of the court upon such objections and motions, and all exceptions to such rulings.

Signed this the 4th day of May, A. D. 1907.

J. A. CROSS,
Court Reporter.

35 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain MARTIN et al., Defendants.

Certificate of Trial Judge.

I, Mason Irwin, the judge who tried the above entitled cause in the above entitled court, do hereby certify that after due consideration, upon notice duly and regularly given therefor, of the above and foregoing statement of facts, and the exceptions and proposed amendments thereto made and submitted by the plaintiffs in said action, A. J. West, through his attorney, John C. Hogan, Esq., and that the matters and proceedings embodied in the foregoing and hereunto attached statement of facts are the matters and proceedings occurring in said cause as settled by order of court duly made herein and I hereby certify to the above and foregoing and hereunto attached statement of facts contains all the material facts, matters and proceedings heretofore occurring and had in said cause and not already a part of the record herein, including the exhibits and identifications.

Witness my hand this the 17th day of June, A. D. 1907.

MASON IRWIN, *Judge.*

536 In the Superior Court of the State of Washington in and for
Chehalis County.

& 7005.

A. J. WEST, Plaintiff,
vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

Filed Sep. 28, 1907. C. S. Reinhart.

It is hereby stipulated and agreed by and between the parties to said action through their respective attorneys that the deposition of Captain H. R. Fredericksen, master of the schooner "Phillipine", may be taken before E. E. Shields, a notary public in and for the State of Washington, residing at Aberdeen, at the office of J. C. Cross, in the city of Aberdeen, Chehalis county, Washington, on the 16th day of May 1906, commencing at the hour of 3:30 in the afternoon of that day and continuing until the same is completed.

It is further stipulated and agreed that the said deposition may be taken in short hand and transcribed and when so taken and transcribed shall be signed by the witness in the manner provided by the statute.

It is further stipulated and agreed that the testimony when so taken shall have the same force and effect as if taken on notice or commission according to the statute and rules and practice of the above court.

That the parties hereto waive any and all objections and exceptions to the time and manner of the taking of the said deposition and all other objections saving and reserving the right to object and except to the propounding of any question or questions, or the making of any answer or answers which either of the parties hereto may deem irrelevant and immaterial or improper.

That this stipulation shall be and become full power and authority for the taking of the said deposition and that the said E. E. Shields, notary aforesaid, shall attach this stipulation to and make the same a part of the return of the said deposition.

In witness whereof the parties hereto have signed this stipulation in duplicate this the 14th day of May, 1906.

J. C. CROSS,
Attorney for Defendant.
JOHN C. HOGAN,
Attorney for Plaintiff.

7 In the Superior Court of the State of Washington in and for
Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Return and Certificate.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 16th day of May, 1906, at the
Office of J. C. Cross, in the city of Aberdeen, Chehalis County,
Washington, at the hour of 3 P. M. of that day, pursuant to the
compulsion hereunto attached and made a part of this return and
certificate, there being present the plaintiff in person and his attor-
ney of record, J. C. Hogan, Esq., and the defendants by their
attorney, J. C. Cross, there appeared before me Captain H. R.
Frederickson, Master of the Schooner Phillipine, a witness produced
on behalf of the defendants who being by me first duly sworn to
testify to the whole truth to the whole truth and nothing else but the
truth in answer to said interrogatories as might be propounded —
him as such witness, gave testimony as shown by this deposition
and the said deposition was carefully read to the said witness and
was subscribed by him in my presence.

In witness whereof I have hereunto set my hand and official seal
this the 16th day of May, 1906.

[SEAL.]

E. E. SHIELDS,

*Notary Public in and for the State of Washington,
Residing at Aberdeen, in said State.*

88 Direct examination of Captain FREDERICKSON.

By Mr. Cross:

Q. Will you give us your name, age and place of residence.

A. H. R. Frederickson. I have now resided on the vessel, the
schooner Phillipine, but I call San Francisco my home port. I am
22 years old.

Q. What is your business.

A. Marine master.

Q. How long have you been a master of vessels.

A. Nearly seven years.

Q. Master of what class of vessels.

A. Sail vessels.

Q. How long have you been coming to Grays Harbor.

A. I have been coming down here for about sixteen years. As
master, I have been here the last two years about ten trips, I think.
Nine or ten.

Q. Are you acquainted with Captain Martin of the Schooner Norwood.

A. Yes.

Q. Are you acquainted with the Norwood.

A. I have been on board there several times, otherwise I am not acquainted with the workings of the vessel.

Q. How long have you known Captain Martin.

A. I am not sure but it must be about three or four years.

Q. Were you present in Aberdeen on the 7th day of this month, May.

A. I was in Aberdeen the seventh day of this month.

Q. Did you see Captain Martin and the Norwood on that day.

Q. Yes sir.

Q. Where were they when you first saw them.

A. The vessel was lying at the G street dock and Captain Martin on board her, on the main deck. The vessel I noticed from the other side before coming across.

Q. What was the captain doing when you first observed him.

A. He was engaged in taking measurements of some chain.

539 Q. About what time of the day was this.

A. It must have been about twenty minutes after eleven o'clock in the forenoon.

Q. Had the vessel unloaded her cargo whatever it was.

A. I am not sure. Did not observe them doing any work. I did not take notice of it.

Q. Did you go aboard the vessel that morning.

A. I did.

Q. Who was present aboard the vessel at that time with you.

A. I went aboard with Captain Sarrins and I met a friend from San Pedro, who was on board as passenger.

Q. Do you remember his name.

A. I think his name is Schwartz. I am not sure. I was also introduced to Captain Martin's wife.

Q. Was there anyone else aboard at that time that you knew.

A. Captain Wirschuleit was on the main deck with Captain Martin.

Q. How long did you remain on board?

A. I suppose it was ten or fifteen minutes.

Q. Were you present when the vessel left the G street dock.

A. I was on the wharf, G street wharf.

Q. Did you hear any whistle blown.

A. I heard him blow the whistle to open the bridge when I saw the vessel was off the wharf ten or twelve feet when she blew her whistle and before she ever let go her lines. She had two lines ashore to guide the vessel off the dock and the lines were still fastened when she blew the whistle. I am not positive but heard him give the order to let go the lines and think he blew his whistle at the same time.

Q. Did you know where he was to load.

A. Yes, he was to load at the Aberdeen Lumber and Shingle Co.'s mill.

Q. Was that the bridge in controversy in this action that
40 he blew his whistle for opening.

A. Yes.

Q. Did you observe whether or not the bridge was closed when he
whistled.

A. The bridge was closed when he whistled.

Q. Did you observe the vessel's movement after she left the wharf.

A. Yes.

Q. State whether she moved slowly or rapidly.

A. Very slowly through the stream.

Q. How was she headed.

A. Towards the bridge up stream.

Q. The bridge is across what stream.

A. Across the Chehalis river.

Q. Did you observe the condition of the tides and the winds
at this time.

A. A strong flood tide and a strong Northwesterly or Westerly
wind.

Q. What was the condition of the tide as to being high or low.

A. I did not observe that. I judge it to have been about half
tide. Did not take particular notice.

Q. Speaking of the tides, Captain, state whether or not these
tide tables are always correct.

Mr. Hogan objects as witness is not qualified to answer, also being
indefinite.

A. The tide tables are not always correct.

Q. State under what conditions if any, the tides may vary from
the tables.

Mr. HOGAN: Same objection.

A. The tides may vary by freshets or strong winds.

Q. To what extent in hours or minutes may the actual flow of
the tides differ from the tables.

Mr. HOGAN: Same objection.

A. Have never observed it.

541 Q. Did you observe the vessel while she was at or near the
bridge.

A. Yes sir, I did, I took particular notice of it.

Q. Who, if anyone, was with you during those observations.

A. Captain Sarrins, Captain Detrick and several more but I do
not remember who they were.

Q. Did you hear the vessel give any other signal while on her
course towards the bridge.

A. When about half way or thereabouts I heard them blow the
same whistle to open the bridge, they gave the same signal.

Q. Do you remember what the signal was.

A. One long and three short whistles.

Q. At what speed was she moving at that time.

A. Moving at slow speed on the way towards the bridge as near
as I could see, not more than speed enough to steer the vessel.

Q. From your knowledge of tides and winds and their effects upon vessels could you state about how rapidly the Norwood would have been driven by the tides and wind on the 7th day of May if she was moving towards the bridge.

Mr. HOGAN objected on the ground that the witness has not shown he was in the necessary possession of knowledge to answer the question nor has he shown himself qualified to answer.

A. I do not think any man could judge it exactly without having instruments to measure it with.

Q. Approximately.

A. Approximately about six miles an hour, perhaps a little more.

Q. What would be the least rate for the vessel to move of her own movement in order to be under the control of machinery.

A. About one or two miles an hour.

Q. Did you observe the condition of the bridge at the time of the second whistle.

542 A. Yes, it was closed.

Q. From where you were could you observe the movements of the vessel after making the second whistle.

A. Yes.

Q. State what course she pursued after whistling the second time.

A. She appeared to steer the same course towards the bridge.

Q. For what distance.

A. About half the distance between where she whistled and the bridge, not quite a half.

Q. That was where she whistled but I mean after she whistled the second time.

A. I could not state more exactly as I was too far away.

Q. Well give your opinion, state about how far, relative to the whole distance from the place of the second whistle to the bridge before she backed her course.

A. Should think about half the distance from there to the bridge.

Q. What change, if any, did she then make in her course.

A. She changed her course to starboard.

Q. Did you observe her course when she changed her course.

A. I was looking at her and the bridge and noticed the bridge was slow in opening.

Q. Were the parties that were with you taking observations also.

A. Yes.

Q. Where were you during this time.

A. I was standing at the wharf at the foot of G street.

Q. Did you observe whether or not she cast her anchor at any point.

A. I observed her cast her anchor.

Q. What position was the vessel in in the river, when she cast anchor.

A. She was crosswise in the river but perhaps pointed a little downwards.

Q. Downwards would mean from the bridge.

43 A. Yes sir.

Q. Then what position did the vessel take.

A. She swung around with the stream and turned towards the ridge.

Q. Could you tell from where you were whether or not the bridge was closed when she cast anchor.

A. They had just started to open the bridge when she dropped anchor but which was done first I could not state. It was about at the same time.

Q. As far as you observed it was at about the same time.

A. Yes the anchor might have gone a little before or the bridge might have opened a little before, I could not state.

Q. Could you tell from where you were which way the bridge opened.

A. Yes sir.

Q. On which side of the draw span was the vessel when she cast anchor.

A. On the south side. Cannot state if the stern was past the middle of the draw span.

Q. What direction did the south end of the draw span take when began to open, up stream or down stream.

A. I think up stream. I am not quite sure but think it was up stream. It must have opened up stream, otherwise it would have come into contact with the vessel.

Q. Did you observe any further movement of the vessel.

A. No; at the time I supposed them to be clear of everything and did so.

Mr. Hogan moves to strike out the answer of witness as to what he supposed and said.

Q. Then what did you do Captain.

A. Went away as I thought it was clear.

Q. Have you ever had any experience with steam vessels, Captain.

A. No, not as an officer.

Q. Have you ever been mate on a steam vessel.

4 A. No.

Q. Have you ever been engaged on steam vessels.

A. Yes.

Q. For how long a time.

A. That is so long ago that I can hardly remember but think about three or four months.

Q. Speaking of the Norwood, Captain, do you know about how much she draws.

A. When loaded she draws about nineteen feet and when without ballast or empty I do not know.

Q. How was she when she left the G street wharf.

A. She was light, I think without ballast, empty.

Q. State whether or not there is any difference in the ability to handle a vessel by the master when loaded or when unloaded.

Mr. Hogan objects as too indefinite and the witness has not shown himself qualified to answer, in vessels like the Norwood.

A. When a vessel is loaded she is easier to handle, especially in strong winds, easier to handle when loaded than empty.

Q. What about the tide.

A. I do not think the tide would affect it as they are usually trimmed so that you can generally handle them as well empty as loaded.

Q. Have you been over the course that the Norwood took on the 7th day of May, when you observed her.

A. I have gone across several times on the ferry boat.

Q. Have you taken observations as to the conditions surrounding the place where she threw out her anchor.

A. No I have not observed any distance. I was not able to see how far she was off the banks.

Q. Now state Captain what would have been the effect of
545 casting anchor when the vessel was about to or would make her curve or turn to starboard.

Mr. HOGAN: Objected to — irrelevant, incompetent, immaterial and the witness has not shown himself qualified to answer.

A. If he had dropped his anchor and the same had held, it would cut the vessel down and she would have swung around and torn the bridge down and done considerable damage to herself.

Q. If her anchor chain had broken, then what.

Mr. HOGAN: Same objection.

A. She would have kept on her same course.

Q. Would it have been possible to have avoided a collision with the bridge by the casting of her anchor at the point where she changed her course.

Mr. Hogan objects as calling for the opinion of witness on a matter at issue in the question and is irrelevant and incompetent; witness has not shown himself qualified to answer.

A. From the point where I stood I could not say just the exact distance off the pier but apparently he could not have avoided the accident by dropping his anchor.

Mr. Hogan moves to strike out the answer as he shows that he has not the necessary knowledge to answer the question, also for the reasons given in the objection.

Q. Assuming that the vessel changed her course to starboard one hundred and fifty or eighty feet from the pier of the bridge then state if you can what your answer would be to the question.

Mr. HOGAN: Same objection.

A. She could not drop anchor and clear the bridge one hundred and twenty feet off as the vessel is over two hundred feet and it takes a length of chain to hold her, to keep her from dragging her anchor.

546 Q. How long have you been a licensed master of vessels.
A. Seven years. Since the law went into effect he had to have a license.

Q. State whether or not the Norwood could have avoided the collision with the bridge by the casting of her anchor and the reversing of her engines or by the reversing of her engines along at the point where she changed her course, if the distance from the bridge at that time was less than two hundred feet.

Mr. Hogan objects to as irrelevant, incompetent and immaterial and witness has not shown himself qualified to answer.

A. No, she could not as the backing of her engines would swing the stern to port and swing her across to wind and tide and drifted into the bridge. I would like to state that the working of her engines, I am not acquainted with, but as a rule that is the way the steamers act, single screw steamers right hand propeller.

Mr. Hogan moves to strike out witness' answer as it appears that he has not the knowledge to answer the question.

Q. Then if the Norwood is propelled by a single screw, right hand propeller then the action of the propeller upon the reversing would have the effect to drive the stern of the vessel to port.

A. Yes.

Mr. HOGAN: Same objection

Q. Do you know whether it was possible for the steamer to have completed her movement so as to avoid the bridge.

Mr. HOGAN: Same objection.

A. No.

547 Q. Do you know whether or not there was any dolphins or piling or protection of any kind to the piers where the Norwood struck, the bridge.

Mr. HOGAN: Objected to as immaterial.

A. There were none.

Q. Did you observe the vessel after she struck the bridge.

A. I seen her lying at the wharf later.

Q. Did you observe what, if any, effects the collision with the bridge produced on the vessel.

Mr. Hogan objected as immaterial.

A. Yes, I saw a break in the upper house.

Q. What was the extent of the injury.

Mr. Hogan objected as immaterial.

A. I was not close to her and I cannot say the extent of it.

Q. Do you know whether or not there were any boards broken on the vessel?

Mr. Hogan objected as immaterial.

A. Yes.

Q. How thick were those boards.

Mr. HOGAN: Same objection.

A. I do not know. I was not near enough to examine it.

Q. Where on the vessel was the point of collision as shown by the break

Mr. HOGAN: Same objection.

A. Well, I have not closely observed it but when seeing the damage I also passed up the river on a boat, a steam launch and did not pay particular notice but somewhere near the middle part of the house, abaft the middle of the house.

Q. Above or below the railing of the vessel.

A. Above.

Q. State if you know the dimensions of the guard on the Norwood.

548 A. I do not know.

Q. Do you know how long the Norwood is, her dimensions.

A. About two hundred feet in length and forty feet in width.

Q. Assuming that at the time she cast anchor she was within two hundred feet of the bridge and there she cast her anchor because of the fact that she could not proceed safely any further in the direction she was going on account of running ashore on the tide lands; you may state whether or not it was possible under those conditions to avoid the vessel striking that bridge.

Mr. Hogan objected as irrelevant, incompetent, immaterial question assuming facts not proven, calling for the opinion of the witness on matter in issue and the witness has not shown himself competent to answer.

A. She might, perhaps by dropping her anchor and steaming ahead, checking herself and giving them a show to open the bridge, if kept closed naturally they just backed into it.

Q. Assuming that the bridge opened with the swinging of the vessel that is, the vessel swinging into the opening of the bridge as she swung, what if anything could the vessel have done to avoid the collision with the bridge.

Mr. HOGAN: Same objection.

A. She could not do anything, the bridge had hardly started to open when the vessel swung in the opening of the bridge.

Q. What would be the effect of reversing her engines, giving her full speed backwards as she swung into the opening, with her anchor cast, on her collision with the bridge.

Mr. HOGAN: Same objection.

A. You mean if she came in contact with the bridge.

Q. As she swung in and her engines reversed at full speed, astern what if any effect would that have on the force with which she would strike the bridge, provided her anchor was cast at the
549 same time?

Mr. HOGAN: Same objection.

A. If her anchor was cast as far to the south side it would bring her back towards the center draw of the middle span.

Q. What effect would it have on the collision.

A. It would ease the collision.

Mr. HOGAN cross-examine- witness:

Q. You are master of the Schooner Phillipine.

A. Yes.

Q. That is a sailing vessel.

A. Yes.

Q. Who are the owners of that vessel.

A. Sanders & Kirchmann.

Q. Who are the agents.

A. They are the agents.

Q. I think you stated Captain that you had no experience as an officer on board a steamer.

A. That is correct.

Q. You said however, that many years ago you worked on board a steamer for about three months.

A. Yes, three or four.

Q. In what capacity.

A. As able seaman.

Q. What were your duties as able seaman at that time.

A. The duties in a sailor's life are various.

Q. In a general way state their character.

A. See to the working of the vessel and sails, clean and paint, make sails, splicing ropes, and many other-, which are too many to mention.

550 Q. Now you remained standing on the G street wharf when the Norwood pulled out on this particular trip where the damage was done to the bridge.

A. Yes.

Q. You were standing there with Captain Sarrins and Captain Detrick and some others at the time.

A. Yes.

Q. You were conversing with these men at that time.

A. I was.

Q. You were conversing while the Norwood was on her way towards the bridge.

A. Yes.

Q. Did you keep your eye on the Norwood all the time.

A. Yes.

Q. Kept looking at her all the time.

A. Yes.

Q. Did Captain Sarrins and Captain Detrick all the time.

A. Yes, I think so as we were facing the river.

Q. This whole group of men standing on the wharf so far as you know kept looking at the Norwood as she was making her course.

A. As far as I know.

Q. What was the occasion of your doing that.

A. Well after hearing her blow the second whistle and the bridge

not opening we were watching the bridge and passing remarks that they were slow in opening the bridge.

Q. It occurred to you then, you men standing there when you heard the second whistle and saw the bridge was not yet open that the Norwood was liable to get into danger.

A. Yes, if they did not open the bridge.

Q. I say, that it occurred to you at the time you heard the second whistle.

551 A. Yes.

Q. Could you see the bridge plainly from where you stood.

A. Yes.

Q. How far was it from where you stood, at the G street wharf to the bridge captain.

A. I think about a quarter of a mile, perhaps a little more.

Q. Well Captain, you are more used to measuring by fathoms I presume, will you give it in fathoms.

A. I should judge about five hundred fathoms, perhaps a little more.

Q. A fathom is how many feet.

A. Six feet.

Q. Now how far if you know, was the Norwood from the G street wharf where you were standing, when she blew her second whistle for the bridge.

A. I should judge from the distance I gave she was two hundred fathoms away or perhaps a little more.

Q. And when she blew the second whistle for the bridge how far was she from the bridge at that time in your judgment.

A. Between three and four hundred fathoms.

Q. The bridge there has two openings when the draw is swinging, a south span and a north span.

A. Yes.

Q. Towards which of these openings was the Norwood directing her course at the time of the second whistle.

A. That I do not know. She could direct it either way.

Q. Was she midstream on the river.

A. I think if anything, she was a little to the north side.

Q. Then being a little towards the north side and continuing her course straight ahead she would naturally have come to the north side span.

552 A. Yes, if she kept in that direction she would have.

Q. Now after she blew her second whistle how far in fathoms did she steer ahead before changing her course to the south.

A. I could not state that distance.

Q. In your judgment how far.

A. I should judge she steamed about two hundred fathoms.

Q. Then what, if any change did she make in her course.

A. She headed to starboard.

Q. Headed to starboard. What direction by the compass was that, approximately, I mean north or south.

A. Southerly.

Q. At the time she changed her course there and made her curve towards the south could you tell from where you were standing how far she was from the bridge.

A. No.

Q. You could not tell that.

A. No.

Q. You could not tell that even approximately.

A. No, it appeared to me that she was clear.

Q. You saw that when she made this curve or changed her course that she appeared to you at that time, that she was clear of the bridge and out of danger.

A. It appeared that way to me. It appeared that she was clear of the bridge. She did not touch the bridge at that time.

Q. Were you paying any particular attention to the bridge at that time, at the time the vessel changed her course, to see if the draw of the bridge had moved at all.

A. It had not moved.

Q. The question is Captain did you pay particular attention to the draw.

A. I did.

553 Q. Then how far did the Norwood continue her course on this curve to the south before casting anchor.

A. About one hundred fathoms or one hundred and fifty.

Q. Then she cast anchor.

A. Yes.

Q. And I think you stated at that time she was crosswise with the stream.

A. Yes. Broadside to the stream.

Q. Was her stern swinging up stream.

A. Yes. Perhaps the bow pointed slightly down the river.

Q. Could you tell from where you were whether the Captain on casting the anchor, whether he applied the power to his vessel in such a way as to drive her backwards.

A. Well that I do not know.

Q. You could not tell that from where you were.

A. No.

Q. You mean to say that you could not tell from where you were whether he endeavored to back his vessel or whether he was backing by the action of the tide.

A. No.

Q. Did you see the vessel strike the bridge or any part of the bridge that day or any of the workings of the bridge.

A. No.

Q. Did you see Captain Martin draw in his anchor or attempt to draw in his anchor, while you were standing there.

A. No. I walked away immediately after she dropped her anchor.

Q. Did your friends all go away.

A. Yes, as near as I remember.

Q. At the distance you were standing from the Norwood when she dropped her anchor that is, you at the G. street wharf and she near the bridge, could you recognize a man at that distance.

554 A. No.

Q. Your opportunity for observing just what was going on at that distance was not the best.

A. No. Did not observe what was going on on board.

Q. Now, you say the Norwood started out at slow speed.

A. Yes.

Q. Probably a mile an hour from her own propeller and in addition to that six miles an hour or more by the action of the tide and wind. That you think was about her speed.

A. Yes, about.

Q. That would be seven or eight miles an hour.

A. About seven miles an hour.

Q. You consider that slow speed.

A. With the condition of the wind and tide they would have to go that speed to keep steerage way for the vessel.

Q. That does not answer the question. I asked you if that was slow speed.

A. It is.

Q. Now when she was making this curve towards the south for what rate of speed was she running.

A. I could not state the speed. It takes some time for a vessel to get under headway.

Q. You do not know what her speed was in making this curve.

A. No.

Q. But at any rate you consider the speed she was running from the G street wharf to the bridge was very slow.

A. Yes.

Q. Supposing the action of her propeller had been reversed to drive her backward how long would it take to stop her how far would it take her before she would go forward.

A. I cannot answer that. One boat would go astern quicker than another.

555 Q. Now do you wish to be understood as saying, Captain, that with this vessel going over that course at the slowest possible speed she was capable of in order to control her steerage that if the anchor had been cast out it would have cut down the vessel.

A. I did not say it would cut it down. I said if the chain held and did not cut it down or perhaps cut it down, at any rate she would have swung around and struck the bridge.

Q. In your judgment Captain if a vessel is running at seven miles an hour, an empty vessel of the size of the Norwood and she cast her anchor while running at that slow rate of speed on a bottom like the Chehalis river bottom, Captain, as a seaman do you think there is danger of her either breaking her anchor chain or cutting down the vessel.

A. Yes.

Q. You give it as your opinion.

A. Yes.

Q. What do you mean by cutting down the vessel.

A. It will cut through the wood part of the vessel. The hawse pipes that the chain runs through, would cut through the wood.

Q. That is to say the chain of the anchor would cut through the planking above deck.

A. Below deck. The hawse pipe is below deck and would cut below deck.

Q. You stated that the Norwood left the G. street wharf at about 11.35.

A. Yes.

Q. And you stood there and watched her for some time.

A. Yes.

Q. You saw her cast anchor and then walked away.

A. Yes.

Q. What time was it when you walked away, if you know.

A. I did not take notice of the time.

556 Q. About what time.

A. About twelve o'clock, I should think.

Q. Was the draw of the bridge open when you left.

A. Partly open. I moved away just as the draw was partly opened.

Q. The draw was partly open and in the motion of opening when you left. If the draw started to open it would not stop.

A. No.

Q. Now which way do you say the draw opened. Which side would it swing.

A. I think the south span opened upwards. I would not state positively.

Q. What kind of a day was the 7th day of May, Captain.

A. I do not know.

Q. With reference to the clearness and sunshine.

A. I do not remember, I know there was no fog.

Q. Did you ever make any test of the flow of the tide waters to determine how fast it travels.

A. No, not exactly. You can tell partly. A person going to sea notices the vessel passing through the waters flowing by the side of the vessel. You can judge pretty nearly of the speed.

Q. Now in practical experience, is it true that at sea with a vessel in motion, as a vessel always is at sea, that you have little or no opportunity to judge of the speed of the tide and that your opportunity to judge of the speed of the tide is much better on land near the water where you can observe with reference to land marks.

A. I can judge the speed as well in the vessel or boat as on land as the tide acts the same passing by the same as when a vessel is sailing through the waters. Of course I cannot state the strength of the tide if a vessel is moving unless I know the speed of

557 the vessel.

Q. You were present here at this examination before this notary when the deposition of Captain Sarrins was taken were you.

A. I was.

Q. You were here and heard the whole of his testimony did you.

A. I think I did.

Q. You afterwards heard the testimony read.

A. Yes.

Q. You also sat here while the testimony of Captain Wirschuleit was taken did you.

A. Yes, part of it.

Q. You were also here and heard the testimony read.

A. Yes, part of it, not all.

Q. When you say that the tide was running at the rate of about six miles an hour, not less than six miles and possibly seven miles, as I think you stated, do you base that on your own judgment or are you influenced in the opinion by what you heard Captain Sarrins and Captain Wirschuleit say, as to the velocity of the tide.

A. I think I said five or six miles, as my own judgment. I am not influenced by any one's opinion.

Q. Now did the Norwood have any sails out that day in going over that course.

A. No, they do not use sails in here.

Q. Now, you say the tide and wind combined without motor power of the vessel would have a tendency to drive the vessel on that day at the rate of about six miles an hour or as near as I can remember between six and seven miles.

A. Yes.

Q. That is substantially your answer.

A. Yes.

558 Q. Now how much of that speed do you attribute to the tide independent of the wind.

A. I should think about five miles an hour, perhaps a little more.

Q. How much of that speed in your judgment do you attribute to the wind on the action of the vessel.

A. One or two miles.

Q. Now, in addition to these forces the vessel was forced forward by her own motor power, how much do you attribute to her own motor power.

A. About a mile or one and a half miles an hour.

Mr. Cross: Redirect.

Q. What would be the effect of the anchor chain cutting the vessel down on the vessel itself.

A. It would put it to considerable expense to get a new bow and new timber.

Q. And the effect it would make of her taking water.

Mr. HOGAN objects to the question.

A. If the planks were cut below the water it will.

Q. You were asked on cross examination whether you were holding conversation between yourselves while on the wharf and while the vessel was on its course towards the bridge. State whether or not that conversation had relation to the Norwood and the bridge.

Mr. HOGAN objects as immaterial.

A. The general conversation did not relate to the bridge or to the Norwood but someone passed the remark that the bridge was slow

n opening but no one at that time thought of any danger until after the second whistle was blown or a little later than that.

59 Q. What danger presented itself to you at that time?

Mr. HOGAN objected as immaterial.

A. The danger I saw in it was that if they did not open the bridge he would go through it and break it down. He could not have helped it.

Testimony closed.

H. R. FREDERICKSEN.

Corrections.

In using the word mile "nautical mile" is meant, page 14, line 6. Line 9 page 14 "500 fathoms" corrected to read "350 or about 350 fathoms."

Line 16 page 14: "Two hundred fathoms" corrected to read "175 fathoms."

Line 20 page 14 "Between three and four hundred fathoms corrected to read "175 fathoms."

H. R. FREDERICKSEN.

STATE OF WASHINGTON,

County of Chehalis, ss:

This certifies that the above corrections were made and signed in my presence and in the presence of the attorneys for the respective parties by the witness H. R. Fredericksen after reading and signing of the original deposition.

[SEAL.]

E. E. SHIELDS,

*Notary Public in and for the State of
Washington, Residing at Aberdeen.*

60 Endorsed: #6330. A. J. West, Plaintiff, vs. John I.
Martin et al., Defendants. Published and filed Nov. 5,
906. W. C. Birdwell, Clerk. A. E. Graham Deputy.

On the Envelope.

Deposition of Capt. H. R. Fredericksen, taken before E. E. Shields, Notary Public of Washington, at Aberdeen, in case of A. J. West, Pl't'ff, vs. Capt. I. Martin, et al., Def'ts. In the Superior Court of Washington for Chehalis County. #6330. Filed May 19, 1906. W. C. Birdwell, Clerk.

561 Filed Sep. 28, 1907. C. S. Reinhart, Clerk.

In the Superior Court of the State of Washington in and for
Chehalis County.

7005.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to said action through their respective attorneys that the deposition of Captain John R. Sarrins, master of the Schooner "Espada", may be taken before E. E. Shields, a notary public in and for the State of Washington residing at Aberdeen, at the office of J. C. Cross, in the city of Aberdeen, Chehalis County Washington on the 14th day of May, 1906 commencing at the hour of 3:30 in the afternoon of that day and continuing until the same is completed.

It is further stipulated and agreed that the said deposition may be taken in short-hand and transcribed and when so taken and transcribed shall be signed by the witness in the manner provided by the statute.

It is further stipulated and agreed that the testimony when so taken shall have the same force and effect as if taken on notice or commission according to the statute and rules and practice of the above court.

That the parties hereto waive any and all objections and exceptions to the time and manner of the taking of the said deposition, and all other objections saving and reserving the right to object and except to the propounding of any question or questions, or the making of any answer or answers which either of the parties hereto may deem irrelevant and immaterial or improper.

That this stipulation shall be and become full power and authority for the taking of the said deposition and that the said E. E. Shields, notary aforesaid, shall attach this stipulation to and make the same a part of the return of the said deposition.

In witness whereof the parties hereto have signed this stipulation in duplicate this the 14th day of May, 1906.

JOHN C. HOGAN,

Attorney for Plaintiff.

J. C. CROSS,

Attorney for Defendant.

562 In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Return and Certificate.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 14th day of May, 1906, at the office of J. C. Cross, in the city of Aberdeen, Chehalis County, Washington at the hour of 3:30 of that day, pursuant to the stipulation hereunto attached and made a part of this return and certificate, there being present the plaintiff in person and his attorney of recor, J. C. Hogan, Esq., and the defendants by their attorney, J. C. Cross, there appeared before me Captain John R. Sarrines, Master of the Schooner Espada, a witness produced on behalf of the defendants who being *being* first by me duly sworn to testify to the truth to the whole truth and nothing else but the truth in answer to said interrogatories as may be propounded to him as such witness, gave testimony as shown by this deposition, and the said deposition was carefully read to the said witness and there subscribed by him in my presence after the corrections therein indicated had been made.

In witness whereof I have hereunto set my hand and official seal this 14th day of May, 1906.

E. E. SHIELDS,

*Notary Public in and for the State of
Washington, Residing at Aberdeen in said State.*

[NOTARIAL SEAL.]

563 Q. Give your name?

A. John R. Sarrins.

Q. Where do you reside?

A. On board the Schooner Espada, no particular place of residence.

Q. What has been your business for a number of years last past?

A. For the last twenty one and one half years going to sea?

Q. How long have you been coming into the port at Aberdeen?

A. Since 1900 in September.

Q. Are you acquainted with the Master of the Norwood?

A. Yes sir.

— Are you acquainted with the Norwood?

A. Yes sir.

Q. How long have you been acquainted with him?

A. About three and one-half years, as near as I can give.

564 Q. Did you see the Norwood on the 7th last?

A. I did.

Q. What time of day?

- A. Between eleven and twelve in the forenoon.
 Q. On the 7th of May 1906 where was you?
 A. I was on board the same steamer, or the Norwood.
 Q. Where was the Steamer, where was she lying?
 A. At "G" St. Dock.
 Q. Was the vessel loaded or unloaded?
 A. Just arrived from sea as I came aboard, discharging different kinds of merchandise.
 Q. Did you observe the vessel make any movements that day?
 A. Yes sir, some where about Twelve o'clock it went to Aberdeen Lumber and Shingle Company and loaded lumber.
 Q. Did you observe as to whether or not there were any whistles blown at that time?
 A. It blew as it left the wharf, just as she was leaving.
 Q. How was she standing or headed as to the wharf?
 A. With her head up the river with her bow.
 Q. Do you remember how many cables she was tied with to the wharf?
 A. She was tied with two lines at the time,—as she let go of the last line she went, the last line was the spring line.
 Q. Did you observe the tides and the wind at this time?
 A. Yes sir.
 Q. How were the tides and wind?
 A. The tide was flood tide and the wind was North West or somewhere near it.
 Q. How were the tides and winds as to being strong or otherwise?
 A. Well I have been quite often and some times it is strong and other times not quite so strong but about six or seven miles per hour.

565 Mr. HOGAN:

- Q. Tide and wind combined?
 A. Yes sir.
 Q. That is the vessel if left to the tide and gale?
 A. Yes.
 Q. As to the motion of the vessel did you observe how she moved away from the dock?
 A. Yes sir.
 Q. State how as to speed?
 A. Was near full speed as she left the dock and she *she* blew her whistle she was going about half speed between dock and bridge the bridge was not open as she blew her whistle again.
 Q. What was the nature of the second whistle?
 A. Same as the first.
 Q. Did you observe the bridge in the meantime?
 A. Yes sir, I did, the bridge was not open.
 Q. Did you notice whether it was started to be open as she whistled the second time?
 A. I could not tell, I did not take notice.
 Q. Now did you observe her movements after the second whistle

A. It commenced to swing around and go back again but the tide was too strong.

Q. In coming from or going from the "G" St. Dock and the opening in the bridge how would the vessel naturally go as to course relative to the stream?

A. I could not answer that question sir, she was going towards the stream.

Q. Was she crossing the tide?

A. Yes sir after she blew the second whistle she was broadside to the tide.

Q. How many were there at the point you were at at the 566 time you were making this observation?

A. I remember the Captain Frederickson of the Philippine and Captain Dedrick of the Cohalla.

Q. Did you observe the vessel after it made its second whistle.

A. Yes sir it commenced to slow down and not so fast as it did at the time of the blowing of the first whistle.

Q. You and those that were present were speaking of the situation?

A. We made a remark between ourselves.

Q. Tell in your own way just what you saw as the vessel blew her second whistle?

A. As she blew the second whistle she did not go so fast and swung sideways towards the south side.

Q. What position was she in when you last saw her?

A. She dropped anchor and was trying to heave it up again.

Q. What position was the vessel standing in relation to the stream when you saw the anchor cast, was it headed towards south bank?

A. Towards the bank and the south side.

Q. Are you acquainted with the conditions as to tide flats and so forth? close to the bridge and the south side?

A.. I am well acquainted.

Q. When you heard the vessel whistle the second time state as to whether or not the vessel had turned toward the tide flats on the south side?

A. Yes sir.

Q. Do you know about where she cast her anchor in the stream?

A. It appeared to me very close to the bridge but don't know how far.

Q. Close to the tide lands?

A. Almost on top of it.

Q. If the vessel had proceeded on the same course that she was taking where would she have landed if at all?

567 Mr. HOGAN: I object to the question on the ground that it calls for the opinion of the witness regarding the fact not proven. And for the further reason that he has not shown himself competent to testify.

A. I believe that the Steamer if it had gone ahead it would have landed in South Aberdeen or on the mud flats.

Q. You saw the vessel after he had cast anchor?

A. No sir, as soon as he had cast anchor we said Martin is all right and we turned around and walked away.

Q. Did you observe the bridge at this time?

A. Yes sir.

Q. State whether or not it had begun to open or not.

A. No it did not.

Q. What is the signal for opening the bridge which you know or do you know?

A. I think it is one long and three short whistles.

Q. Do you know of any regulations for the bridge?

A. No sir, I am not aware of that.

Q. All you know is you know the number of whistles to open the bridge?

A. Yes sir.

Q. Have you been along the course of the Steamer since the 7th, the course that she took?

A. Yes sir, several times crossing it and so on.

Q. Have you made observations as to the relative position of the steamer and the bridge and the tide shore there where she cast her anchor since that time?

A. I have.

Q. Do you know about what the length of the vessel is.

A. I do not know.

Q. Do you know how much water she draws?

A. About nineteen feet when loaded.

Q. Was the bridge between the starting point at "G" St. 568 and the wharf of the Lumber Company where she was destined to load?

A. Yes sir.

Q. You observed which side of the swinging draw he was making for when he blew his second whistle?

A. I cannot answer that he could go on either side of the draw but know not which side he intended to go.

Q. Is there any rule for passing those draws?

A. I do not know.

Q. From your observation made at the time that the vessel cast anchor; you may state whether or not it was possible for that Steamer to safely proceed directly as she was going when she cast anchor?

Mr. HOGAN: Object to the question as calling for the opinion of the witness on one of the questions at issue and further that the witness has not shown himself competent to testify and the answer called for is irrelevant, immaterial and incompetent.

A. I could not state.

Q. Assuming Mr. Witness that at the time the vessel began to make her turn to the right she had attempted to go backwards, what would have been the effect on the vessel relative to the bridge.

Mr. HOGAN: Objected — as irrelevant, incompetent and immaterial calling for the opinion of the witness on one of the questions

at issue and further that the witness has not shown himself competent to testify.

A. If he had backed in he would have knocked the draw span down I believe.

Q. Are you acquainted with the course of vessels of the character of the Norwood, that is when she attempts to back?

Mr. HOGAN: Objected — as irrelevant, incompetent and immaterial calling for the opinion of the witness on one of the questions at issue and further that the witness has not shown himself
569 competent to testify.

A. Most of the steamers of the class of the Norwood as a rule by backing, they back to port.

Q. And when you say that if he had backed his vessel he would have struck the bridge how do you explain the afterward movement?

Mr. HOGAN: Objected — as irrelevant, incompetent and immaterial calling for the opinion of the witness on one of the questions at issue and further that the witness has not shown himself competent to testify.

A. Well she would strike it if she had backed she would have turned to port.

Q. And the tide is that way?

A. Yes sir.

Q. So that the wind and the tide would have struck her alongside.

A. Yes sir.

Q. How far would the steamer have had to back to become board-side with the wind and tide.

A. I don't know.

Q. You are acquainted with steamers or steam vessels?

A. Yes sir; I am licensed mate of Steam vessels.

Q. How long?

A. Since 1898. Sail before that.

Q. You have been an officer of steamers and sail vessels for how many years.

A. Since 1892.

Q. Now Captain you may state whether or not it was possible for Captain Martin to have manipulated or directed the Norwood any way so as to — avoided striking that bridge?

Mr. HOGAN: Objected to as calling for the opinion of the witness on the question at issue and as irrelevant and incompetent and immaterial, the witness does not show himself qualified to answer.

A. I believe that if I had been in charge of that steamer
570 I or any one else could not have done better if as well.

Q. State whether or not the course and conduct of the vessel as directed by Captain Martin was the proper course under the circumstances which you observed?

Mr. HOGAN: Objected to as calling for the opinion of the witness on the question at issue and as irrelevant and incompetent and immaterial, the witness does not show himself qualified to answer.

A. Yes sir.

Q. Confine yourself to the conditions after the blowing of the second whistle?

Mr. HOGAN: Objected to as calling for the opinion of the witness on the question at issue and as irrelevant and incompetent and immaterial, the witness does not show himself qualified to answer.

A. What I observed, Captain Martin done what I would have done if I were in charge of the steamer, perhaps some would have done worse and run into the tide flat but Captain Martin appeared to be very cool headed and handled his steamer very competent.

571 Cross-examination by Mr. HOGAN:

— You are master of the Espada, Captain.

A. Yes.

Q. Who are the owners of the vessel.

A. Sudden & Christenson.

Q. The same people who control the Norwood.

A. Yes.

Q. What sort of a vessel is the Espada.

A. Four masted schooner.

Q. Have you a master's license for a steam vessel.

A. No sir I have not. I am just out ready to take a master's. I could have done it before but I have neglected it.

Q. Is a master's license limited to a sailing vessel.

A. I beg your pardon. One is for steam and one for sailing.

Q. When did you arrive in Aberdeen with your vessel on the trip.

A. 25th day of April.

Q. Where are you loading.

A. South Aberdeen. Lumber and Shingle Company.

Q. Same place where the Norwood loaded.

A. Yes.

Q. You say you went aboard the Norwood, Captain, the 7th day of May, the day the bridge was broken out.

A. Yes.

Q. Where were you immediately before that.

A. Came across the river from my own vessel.

Q. About what hour of the day did you leave your vessel.

A. At the same hour, as it only took five or six minutes.

Q. What hour was that.

A. About eleven or five minutes after eleven.

Q. Did you stay aboard your vessel the night before.

A. Well I do not know what business that is of yours. I might have been. I am master of my own vessel.

572 Q. You do not decline to answer that.

A. No. I was aboard my own vessel.

Q. What time then did you go aboard.

A. I do not remember.

Q. Do you remember any place you were the night before.

A. No, I do not.

Q. Now when you went aboard the Norwood between eleven and twelve you say the Norwood had been discharging cargo about two hours.

A. I beg your pardon. Not two hours.

Q. Prior then to that time.

A. No sir.

Q. How long had the Norwood been discharging cargo.

A. I do not know.

Q. About how long was it before coming aboard you saw the Norwood lying at the G Street wharf.

A. I do not understand your question.

Q. Well, did you see the Norwood lying at the G street wharf before you left your vessel in South Aberdeen.

A. Yes.

Q. How long before that did you first see the Norwood lying there.

A. Well I do not remember, but think it must have been nine or ten o'clock.

Q. Then between nine or ten you saw the Norwood lying at the G Street wharf.

A. I told you so. It is very easy to find out.

Q. Do you know how long.

A. No I do not. I could not state within the hour or half hour.

Q. You and Captain Martin have been friends for three or three and one half years you say.

A. Yes, more or less, sir.

573 Q. Was it your purpose in coming from South Aberdeen when you saw the Norwood to visit Captain Martin.

A. Yes sir. Belonging to the same Company I naturally went over to see him and shake hands but I did not come for that purpose alone—

Q. You went aboard to shake hands.

A. Well perhaps we kissed each other.

Q. How long did you stay aboard.

A. Very few minutes. I do not know but about ten or twelve minutes.

Q. Who was with you when you went aboard.

A. Captain Frederickson.

Q. Who else.

A. No one.

Q. Where did you meet Captain Frederickson.

A. At the ferry. We went across together on the ferry.

Q. Is he loading at the Aberdeen Lumber & Shingle Company.

A. No.

Q. You and Captain Frederickson crossed the river together and went together on board the Norwood to visit Captain Martin.

A. Yes.

Q. You say you stayed about ten or twelve minutes.

A. Yes more or less.

Q. Where did you see Captain Martin. What part of the vessel was he in.

A. On the main deck, looking at some cargo.

Q. He was on the main deck.

— Yes on the main deck of his steamer.

Q. Did you go to his cabin.

A. Yes.

Q. Did Captain Frederickson go to his cabin.

A. I do not know.

574 Q. How long did you stay in the cabin.

A. I was only ten or twelve minutes on board.

Q. What part of that time did you spend in the cabin.

A. Most of the time I was on deck speaking with his wife and children. So you can imagine the length of time I was in the cabin.

Q. Did you have anything to drink there.

A. I do not drink.

Q. You do not drink at all, Captain.

A. Yes.

Q. It has gone into the record Captain, that you do not drink. Do you drink and did you drink on board that vessel that day.

A. Yes I drink sometimes but did not drink anything on board that day.

Q. Did Captain Frederickson.

A. I think not.

Q. Did Captain Martin.

A. I do not know. I could not state. He could not very well while I was there as he was on the main deck and the cabin is quite a distance off. It is quite aways. I cannot tell you. I do not know how to explain it.

Q. You went into the Captain's cabin.

A. I spent most of the time on deck.

Q. Now then you stayed on board until the Captain was ready to start.

A. I did not. I left about fifteen minutes before he started.

Q. You left fifteen minutes before he started out.

A. Yes. More or less.

Q. Where did you go to.

A. I stood on the wharf until he left.

Q. What did you do there.

A. We watched the vessel until she left, me and some other captains.

Q. Who were all the captains standing there on the wharf.

A. I was one, myself, Captain Frederickson, and the Captain of the Kohala, Captain of the Corondo, Lindquist, and Captain
575 Johnson of the Traveller and Captain of the Printer, Sanborne, I think his name is.

Q. Now you stood there and when the steamer left you watched her.

A. Yes.

- Q. He started out at full speed.
A. No, After whistling he started out.
Q. How far is it from the wharf to the drawbridge.
A. I do not know.
Q. You could not form an estimate.
A. I could not state whether it was a quarter of a mile or more
ut leave it to the judgment of Mr. West and yourself.
Q. You do not pretend to form an idea, was it a quarter of a mile
r three quarters of a mile.
A. I do not know, probably a quarter of a mile, more or less.
Q. What is the speed of the Norwood, at full speed.
A. I do not know it.
Q. What do you think about it.
A. I could not say.
Q. You do not form an idea of it.
— I did not try to.
Q. Well do you think she ran twelve or fifteen miles.
A. I do not know.
Q. Did you stand there and watch them leave.
A. Yes.
Q. Now when she got near the bridge did you hear her whistle
e second time.
A. Not near the bridge, but about half way to the bridge she blew
e second whistle.
Q. About half way to the bridge.
A. Yes sir.
Q. How many feet or fraction of mile was she from you.
A. I could not say.
Q. What distance from you was she then.
A. About half way to the bridge from the G street wharf.
6 Q. How many feet.
A. I do not know.
Q. Could you tell in fathoms or yards.
A. No.
Q. Had she passed the mouth of the Wishkah River when she
istled the second time.
A. She must have passed it.
Q. Well had she passed the river before blowing the second time.
A. I could not say but think they were abreast it but could not
ear to it.
Q. Where was she in reference to the West & Slade Log Boom.
A. I could not say as I do not know how far that extends.
Q. Did you hear her whistle a second time for the bridge and
l you see her cast anchor at that time.
A. Yes sir. He did not cast anchor at the second whistle.
Q. How long after she whistled the second time before she cast
ehor.
A. I did not notice the time but it must have been only a few
nutes.
Q. How far ahead had they moved.
A. I do not know the distance.

Q. Have you any idea the distance she moved after blowing the second whistle before she cast anchor.

A. It is impossible to say in fathoms or miles. We have a drawing her- that Mr. Cross has now and that will tell you about as near as I can say.

Q. How many feet.

A. I could not state how many feet.

Q. Could you tell how many yards.

A. I could not tell unless I had a chart.

Q. How near was he to the bridge.

A. I could not judge but it appeared to us that Captain Martin would clear it easy.

Q. Do you know how near he was to the bridge then.

A. It appeared to us he would clear it easy. I left the wharf and some others left with me before it happened. I know
577 she was clear but the tide was swinging them towards the bridge.

Q. How far from the bridge.

A. I do not know.

Q. In what direction was the vessel held when you saw them cast anchor.

A. Towards the shore of South Aberdeen but the tide was still swinging her towards the bridge.

Q. The vessel then was crosswise of the stream when he began putting out the anchor.

A. With the bow down stream, against the tide, down river.

Q. You spoke of his drawing in the anchor. Did you see him do it.

A. No, he had just commenced to do it as it appeared to me. I could not tell just exactly what he was doing.

Q. When you saw him drawing in the anchor you left.

A. I am not sure he brought it in but think he was doing that.

Q. Then you went away.

A. Yes.

Q. How far were you from the Norwood or Captain Martin when you saw him throw out anchor.

A. I was at the G street wharf.

Q. How far is that from him.

A. As far as he was from me.

Q. And you cannot tell how near he was to the bridge.

A. It appeared to me before I left the wharf they were clear of the bridge.

Q. How far do you call clear.

A. Well a hair's breadth would be clear, so would more.

Q. You cannot tell how far it was.

A. No sir, I cannot.

Q. Did you see him strike the bridge.

A. No.

Q. Was the vessel moving when you left.

A. Only swinging towards the bridge. That is as near as
78 I could see. I was too far to tell exactly what it was doing.

Q. That does not prevent you from expressing an opinion
as to how he handled his vessel.

— No. I think Martin did all he could do.

(Mr. Hogan thinks this not responsive to question and moves to
strike it out.)

Q. Now this bridge has two openings, when the spans is open it
admits a vessel to pass through either opening has it not.

A. I do not know on which side he would go.

Q. Well there are two openings.

A. Yes sir.

Q. Now toward which one of them did the Norwood direct her
course when she first started out.

A. I could not tell, I was not in the boat. I could not tell what
his intentions were.

Q. In going from the G street wharf towards the bridge on which
side of the center of the stream or river did the Norwood keep on
her first course.

A. If the bridge had been opened when he blew the whistle even
the second time he could have gone through either side.

Q. You have seen Martin since this happened, talked with him
about it.

A. Yes.

Q. You have gone all over it together.

A. We spoke of it.

Q. Do you refuse to answer this.

— We spoke of it.

Q. You talked it all over.

A. We spoke of it.

Q. You do not know how long it was after he left the G Street
wharf before Martin struck this bridge.

A. I do not know exactly. I did not notice particularly. It was
not very long, probably a half or three quarters of a hour, probably
less.

79 Q. How near was the tide full that day.

A. I did not notice. The tide was running in fast.

Q. Was it a clear day.

A. I think so.

Q. What is the tonnage of the Norwood.

A. I do not know.

Q. Have you any idea.

— I have not.

Q. With a chief mate's license yet you cannot state?

A. I could not say. I have no record. I have knowledge on
that point but do not express any opinion.

Redirect examination.

Mr. Cross:

Q. In your cross examination you were asked how long it was after the Captain cast anchor until the Norwood struck the bridge.

Mr. HOGAN: I asked him how long after he left the wharf.

A. I did not see what time he struck the bridge because I did not see it when it struck.

Mr. Cross: From suggestions made in the cross examination as to Captain Martin being under the influence of liquor or taking any at the G street wharf, you may state whether or not he was.

A. I am sure he was not.

Q. Were you well acquainted with the Captain.

A. Yes.

Q. Have you ever seen him under the influence of liquor.

A. No.

Q. State whether or not at the G street wharf he was engaged in and about his vessel and if so what was he doing.

A. He was attending to some business on the main deck and I could not explain all this.

Q. With whom was he doing business.

A. A gentleman from Seattle. Mr. Bryant working for Lewis. Anderson & Forbes. Giving orders in and about his vessel

580 Recross-examination.

Mr. HOGAN:

Q. I think you stated in your examination you did not notice whether or not the bridge was open.

A. I said it was not open as long as I stood there. When I left the bridge was still closed.

Q. Which anchor did he drop. Did he drop port anchor to starboard or starboard anchor to port?

A. I do not think a man would do that.

Q. Which anchor did he drop.

A. I could not say from where I stood.

Q. You could not see from that distance.

A. No.

Q. Which side the vessel did he drop the anchor.

A. I could not say anything about it.

Q. The starboard anchor would be on one side and the port anchor on the other, which did he drop.

A. I could not state.

Q. The reason was because you were too far away.

A. I could not say. But I could see they had an anchor but did not notice which anchor he used. I did not take particular notice.

JOHN R. SARRINS.

Endorsed: No. 6330. A. J. West, plaintiff, vs. John I. Martin et al., defendants. Deposition of John R. Sarrins. Published & Filed Nov. 5, 1906. W. C. Birdwell, Clerk. A. E. Graham, Deputy.

On the Envelope: Deposition of Capt. Jno. R. Sarrins taken before E. E. Shields, Notary Public of Washington, at Aberdeen, in case of A. J. West, pl'ff, vs. Capt. I. Martin et al., Def'ts. In the Superior Court of Washington for Chehalis County. #6330. Filed May 19, 1906. W. C. Birdwell, Clerk.

581

7005.

In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

Filed September 28, 1907. C. S. Reinhardt, Clerk.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys of record herein that the deposition of C. D. Schwartz, a witness produced on behalf of defendants may be taken at the office of J. C. Cross in the City of Aberdeen, Chehalis County, Washington, and before E. E. Shields a Notary Public, on the 23rd day of October, 1906, commencing at the hour of nine o'clock A. M. of said day and continuing from day to day until completed; and that the deposition when so taken shall have the same force and effect as if taken upon notice duly and regularly given therefor.

That the plaintiff herein waives any and all formal notice for the taking of said deposition and any and all irregularities relating to the taking of the said deposition are hereby waived; the said plaintiff and the said defendants reserving to themselves the right to object and except to the materiality and sufficiency and relevancy of any portion of said deposition or testimony as to them or either of them may seem right and proper; and such objections or exceptions may be urged for the first time by either of the parties hereto when the said deposition shall be offered or read in evidence. The reading to and signing by the witness of the transcribed shorthand notes is waived.

In witness whereof the parties hereto through their said attorneys sign this stipulation in duplicate this the 23rd day of October, A. D. 1906.

582

J. C. CROSS,
Of Attorneys for Defendants.
JOHN C. HOGAN,
Attorney for Plaintiff.

583 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Deposition of C. D. Schwartz.

C. D. SCHWARTZ, a witness produced on behalf of the defendant being first duly sworn to testify to the truth the whole truth and nothing but the truth, was interrogated and testified as follows to-wit:

Direct examination by Mr. CROSS:

Q. Where do you live Mr. Schwartz?

A. Los Angeles. I make that my headquarters.

Q. You are, are you in anywise connected with the steamer Norwood?

A. No sir, none whatever.

Q. State your age please?

A. Thirty years.

Q. Were you on board of the Steamer Norwood on the 7th day of May last?

A. I was.

Q. In what capacity were you on board of her?

A. Merely a passenger.

Q. You were in position to observe the conduct of the Captain Martin, on the 7th day of May from the time that he arrived in port of Grays Harbor until the vessel was alongside the mill company's wharf?

A. Yes sir.

Q. Above the bridge?

584 A. Yes sir.

Q. You were on board of the vessel when she discharged her cargo of freight at Aberdeen on that day?

A. Yes sir.

Q. What, if anything, was Captain Martin doing in connection with the vessel?

A. He was superintending it, around in front measuring chain there. A. Gentleman came down there, and they measured chain right in front of where we stood there. He was around there for quite a while.

Q. Did you observe his conduct in port when the vessel was discharging her cargo?

A. Yes sir, he carried a lady off of it. I was surprised that he could carry a person off of a place in an angle like that was. Angle was like that (indicating). Gangway up about forty-five degrees.

Q. About forty-five degrees?

A. Yes sir, that is approximately of course. It was very steep.

Q. Was the lady ailing?

A. Yes, she had been. Didn't know whether she would live. They didn't know whether she would live through the night in Aberdeen here.

Q. Were you aboard when she left the "G" Street Dock?

A. Yes sir.

Q. Where was the Captain when she swung loose from the dock?

A. He was on the bridge. That is what it is, the bridge.

Q. Where were you, what part of the vessel were you on?

A. On the right hand side, in bow. You might say on saloon deck.

Q. That would be about how far from the Captain?

A. Should say about nine or ten feet. From where the Captain was standing about twelve feet anyway. He was walking back and forth all the time.

Q. Was there anyone on the bridge with him?

A. Yes, Black Jack, they call him. I believe that is the man's name.

585 Q. When did Captain Jack come aboard, do you know?

A. He came aboard down there. He hollered to him something about a letter, or something.

Q. The Captain came aboard at the "G" Street Dock?

A. Yes Sir. Talking something about a letter, something like that, a bill or something.

Q. What, if any, signal did you observe?

A. He blowed at the wharf to-, I suppose? to open the bridge, which they naturally do, and cast off. Just when he was casting off.

Q. You were in a position where you could see the bridge from where you stood?

A. Yes Sir.

Q. Was anyone with you?

A. Was, yes, the engineer, and the Captain's wife stood right there.

Q. State how the vessel moved toward the bridge, as to her speed?

A. Was just merely moving, and that was all. Moved along about steerage way under slow bell.

Q. Under steerage way?

A. Just steerage way, that is as near as I can describe it, very slow. When he got down a ways he blew -gain.

Q. As to the distance to the bridge, about what portion do you think he had passed over?

A. One half or something like that from the wharf.

Q. Do you know about how far it is from the "G" Street wharf to the bridge?

A. It would be more of a guess than anything else, in the approximate, in the neighborhood of two thousand feet, or something like that.

Q. Never made any thorough observation?

A. Never made any measure of it, or anything like that; that is approximately.

586 Q. Where were you when she blew the second time, were you standing in the same position as when you started—where were you?

A. I was in the same position on the boat.

Q. What, if any action, did the vessel take when she blew the second time?

A. It kind of kept going ahead a little bit, and of course it came to him that the bridge was not opening, when he blew the second time, and had practically stopped when the bridge started to open, and he kept headway on it, and the bridge went back again.

Q. Could you see the bridge plainly from where you stood?

A. Yes sir, of course I could not tell—

Q. What were you going to say?

A. I could not tell how far open, or anything, but know that the bridge was open a distance.

Q. Could you distinguish the direction in which it was being opened, from where you stood?

A. Yes, the south end of the bridge started to swing down stream, and then it went back, and swung the other way with the south end towards up stream.

Q. What position was the vessel in when the bridge began to open?

A. It was kind of on the move across the bay, across the river on the swing.

Q. Where was it when it began to open the first time?

A. It was held up for the bridge on the north side and then when the bridge shut—

Q. There was a flag man went out on the bridge, a span or two I suppose, and waived it, and that time the vessel began to sheer off across the river.

Q. To the right or the left?

A. To the south I think.

Q. Did you observe a flag?

587 A. Yes Sir, I observed the flag there.

Q. Was it stationary?

A. There was a man came out from the house, a- ran along the bridge a ways. I saw the fellow running along and waiving it.

Q. You saw it?

A. Yes sir.

Q. Which direction would you say he went?

A. What I could see, on the south side.

Q. That was the first signal that you had observed?

A. Yes sir, that was the first signal that I noticed.

Q. How far was the vessel from the bridge when it closed back?

A. About three hundred feet I suppose.

Q. Where were you at the time that the bridge closed back relative to the time when you saw the signal?

A. A very short time. It seemed about that time. Some one went and got a flag. I suppose one half a minute, maybe more; about

that. It was immediately afterward. It could not have been very long.

Q. You were in a position to observe the opening of the bridge from where you stood until it became fully opened?

A. Yes sir.

Q. About how was the vessel standing relative to the bridge, the swinging span when the anchor was cast?

A. Like this. (Indicating.)

Q. That would be across the stream?

A. Yes sir.

Q. Which part of the vessel was closer to the bridge, the bow or the stern of the boat, when the bridge opened?

A. Closest to the bridge?

Q. Yes?

A. I suppose it would be amidships.

Q. If the bridge had been in a closed condition, which would have been closer to the bridge at the time that it opened, the
588 bow of the vessel or the stern of the vessel?

A. The stern of the vessel.

Q. Did you observe the condition of the vessel when the anchor was cast?

A. Yes sir.

Q. Do you know the relative position of the vessel with the bridge as the bridge opened?

A. After the anchor was cast?

Q. Yes.

A. Yes sir.

Q. State whether or not the stern of the boat followed in after the bridge as it opened?

A. It did.

Q. State just how the vessel struck the bridge, what part?

A. I was standing about four feet from it. It struck the cross-beam of the bridge over the pier. It struck it, and then she tightened up at the same time, and cleared with a swing, swung right in through.

Q. Tightened up on what?

A. On the anchor. Heaved and backed at the same time, I suppose.

Q. On the anchor.

A. Yes.

Q. Was the vessel backing at the time that she swung in against the bridge?

A. There was a terrible tide. As to that I could not say, that he was backing her at the time that he struck her.

Q. The vessel had backed about how far, what portion of the vessel had backed into the opening before the collision?

A. Collision? Well taking it in line, it would be about like this (indicating), struck the bridge.

Q. What portion of the vessel was within the opening when it struck the bridge?

A. It struck about midship. I suppose you would say one half.

589 Q. One-half of the length of the vessel?

A. On an angle of about forty-five degrees, something like that.

Q. Then the vessel was, when it struck the bridge, was at an angle with the bridge of about forty-five degrees?

A. Yes, approximately, of course pretty hard to get angles down only approximately.

Q. Do you know what brought the vessel from the bridge, or relieved it?

A. The tension on the chain. Backed her to port free and clear of the draw. It swung clear of the bridge, and backed right in.

Q. Did you hear the Captain give orders?

A. I did?

Q. What, if any, orders did he give, if you remember, at the time the bridge closed?

A. He told the mate to get the anchor ready.

Q. That is all that he said.

A. That is all that I remember.

Q. Are you acquainted with the signals and directions aboard vessels. Do you understand their code of signals and commands?

A. Why, that is ordinary talk I understand some. I cannot steer a boat.

Q. Did you observe whether the bridge opened rapidly or slowly when it did finally open?

A. It opened slowly, of course I do not know the velocity.

Q. About as long as it takes to turn a bridge ordinarily?

A. I could not say. It looked slow to me. Everything was excitement, and all looked for a kind of a smash somewhere.

Q. Were the parties on board the vessel excited.

A. Not a bit. I never saw a much cooler man, with the commands that he gave.

Q. I do not mean the Captain himself, but those that were
590 aboard of the vessel?

A. No, nobody excited.

Cross-examination by Mr. HOGAN:

Q. Los Angeles is your home, Mr. Schwartz?

A. Yes I make that my headquarters.

Q. What is your business?

A. Mining.

Q. What companies are you interested in at the present time?

A. None at the present time I just came in from the *the* Pyute Mountain.

Q. When did you come in from there?

A. Well I just came in from there and went down to see my sister and I met him the day before I sailed and I saw the Captain and I came through and that is why I happened to come up to the time.

Q. You came up to have your deposition taken in the case?

A. Yes sir.

Q. That is you came in from that mine to Los Angeles and there you met the Captain and he asked you to have your testimony in this case taken?

A. He asked me what I was doing and I told him nothing and that I wouldn't be doing anything for about two weeks then I was going to Oxacea Mexico.

Q. So you made the trip up on the Norwood to give your testimony here?

A. Yes sir.

Q. You are going back on the Norwood?

A. Yes sir.

Q. When did you come up here before?

A. On the 7th day of May.

Q. What was your business on that trip?

A. I was going over to Wenatchee and when I got here I received a letter and I wired that I would go back.

591 Q. Did you go back on the Norwood?

A. Yes I went back to Providence Mine.

Q. You came up on the Norwood and returned on the Norwood on the same trip?

A. Yes.

Q. Did you stay aboard the Norwood while she was loading in Aberdeen, in May?

A. Yes sir.

Q. Have your meals aboard?

A. Yes sir.

Q. Did you do any work?

A. No sir.

Q. Never worked on board?

A. No sir.

Q. Did you get free passage back on the Norwood?

A. Yes sir if I paid for it.

Q. Did you pay for it, or did you get it free in May, from Aberdeen to Los Angeles?

A. I paid for it.

Q. Had a regular passenger ticket?

A. Yes sir.

Q. Regular rate.

A. I paid for the passage.

Q. How much did you pay for it?

A. I might say I got the ticket practically given to me.

Q. Since coming to Aberdeen on this trip you have been up to look at this bridge have you not?

A. I saw the bridge, yes.

Q. You have looked over the locations again to refresh your recollections?

A. I have not been up to the bridge, no, nor to see it.

Q. You say you haven't seen the bridge this trip?

A. What I know is just as I saw it that time.

592 Q. You sat in this room when the deposition of William Anderson and the last witness were taken?

A. Yes, I was part of the time.

Q. You heard his testimony in regard to this case?

A. I did not, I didn't take notice as to what he was saying.

Q. You were sitting here within a few feet of him were you not while his testimony was being taken?

A. I was not interested in his evidence whatever.

Q. This Black Jack that you mentioned is *know*, his great name is Captain Wierschuleit, Captain of the John C. Meyer?

A. Yes sir some name like that.

Q. When did you come to town this trip? When did the Norwood arrive?

A. The 19th of this month.

Q. And she has been on the Harbor ever since?

A. Yes sir.

Q. What mill is she loading at?

A. The farthest mill up.

Q. In Hoquiam?

A. Yes sir.

Q. Now since coming to town you read the deposition of Captain Wierschuleit did you not?

A. No sir.

Q. You heard it read?

A. No sir.

Q. What depositions have you read? or heard read?

A. I have not read or heard any read.

Q. You have not heard any?

A. No sir.

Q. Did you read any court papers pertaining to this case?

A. No sir none whatever.

Q. On the 7th day of May, when the Norwood came into Grays Harbor what wharf did she first stop at?

A. The City Wharf, that is what they told me, I do not know.

593 Q. In Aberdeen?

A. Yes sir.

Q. What time of day did she tie up at that wharf?

A. Ten or half past ten.

Q. What time of the day was it that she whistled for the bridge and threw her lines from the wharf?

A. About eleven o'clock as near as I remember.

Q. Now Mr. Schwartz what first called your attention to the fact that the north end of the bridge had started to open up stream and then stop and come back into position?

A. Because I thought it was funny proceedings for a swinging bridge to take, I saw several of them and never saw one to act like that one did before.

Q. You are sure that is the case?

A. Yes sir.

Q. Capt. Wierschuleit was on the bridge of the boat, with Captain Martin?

A. Yes sir.

Q. He was in as good a position to observe as you were was he?

A. I guess he was every bit.

Q. And did you notice whether he and the Captain Martin were looking at the bridge?

A. I didn't take notice but a man can't very likely get out of that and say they were not.

Q. If Captain Weirschuleit or Black Jack should say that the north end of the bridge didn't move up stream and then went back into position, close again, would that shake your belief?

A. I don't care what he says.

Q. How far did it open?

A. I could not tell how far it opened, or the distance.

Q. How far did it open?

A. Maybe five feet or maybe twenty? I could not get a survey of it.

Q. Could it have been over twenty feet?

A. It might have been but I didn't notice, I could not tell.

594 Q. Could it have been less than five feet?

A. I don't think so.

Q. How far from the bridge were you when it opened this five feet? How many feet were you from the bridge when it occurred?

A. Well when she first started the first time it was about, I suppose it was six or seven hundred feet.

Q. When was that occurrence with reference to the second whistle for the bridge?

A. Well when he whistled the second time that is when he started to go through.

Q. That is when the bridge you might say went back?

A. Yes sir.

Q. Which occurred first the second whistle or this false movement of the bridge?

A. He whistled the second time and the false motion of the bridge started immediately, and then he had to change his course.

Q. Did any one make any comments on that action of the bridge? In the opening part of the way and then closing?

A. I heard nothing whatever.

Q. Did any one make any remarks forward?

A. Yes they thought they might have proper signals or something.

Q. Did anyone make any remarks on the false motion on the part of the bridge while you were aboard that day?

A. Not that I know of.

Q. Just general discussion?

A. Yes sir.

Q. You are sure that the bridge opened finally with the south end up stream?

A. Yes the south end up stream.

Q. The final opening.

A. Yes sir.

595 Q. How far was the captain from the south pier, I mean how far was the Norwood from the west end of the long resting pier in the center of the river when he changed his course to the south?

A. He had I suppose about three hundred feet.

Q. He was three hundred feet down stream from the lower end of the resting pier?

A. Yes sir.

Q. That is the time that you saw the man waiving the flag on the bridge?

A. Yes sir.

Q. And that is the time that the bridge began to open with the south end up stream?

A. Not until he was pretty well headed across.

Q. How far from that point had he moved, that is the point at which he changed his course to the south before the south end of the bridge began to open up stream?

A. Well, I could not say, she was almost on the mud bank when she began to open or on it I don't know which.

Q. When you saw the man waiving the flag there, how far were you from the man?

A. Well, I suppose three hundred feet or four hundred feet, I could not tell you just exactly, from two to four hundred feet.

Q. From two to four hundred feet.

A. Yes sir.

Q. Was that a man or a boy?

A. Well I could not say whether it was a man or boy because he was right against a timber or something and I could just make the flag out and that was all.

Q. And you could not tell whether it was a man or boy?

A. No.

Q. You say you saw this man walking out of the house on the bridge?

A. I saw him run out and past the house and I seen him shove that flag out and then I saw the vessel change its course.

596 Q. You say you saw him running out and waiving the flag?

A. Yes sir.

Q. How far did you see him running?

A. Quite a little ways, a little ways past the house, maybe a hundred feet.

Q. And you were two to four hundred feet from him and yet you could not tell whether he was a man or boy, he was not behind any timbers or beams at that time?

A. Yes he was in plain view.

Q. You could not tell whether he was a man or boy?

A. No I could not tell whether he was a man or boy.

Q. You could tell whether he had a beard or not couldn't you?

A. No I didn't take notice whether he had beard or not my attention was called to the flag and not to the person.

Q. Do you know how much water the Norwood draws when she is empty?

A. I do not know.

Q. What make you say that she was on the mud banks?

A. I noticed when I was over there that the tide *when* out and left nothing but the mud banks.

Q. You saw them throw out the anchor?

A. Yes sir.

Q. They threw out the anchor on the side of the vessel that you were standing on?

A. Just what side I could not say.

Q. Which side of the vessel were you on?

A. On the right hand side and when she began to swing I walked over and was standing right there when she hit the bridge.

Q. How much anchor chain did she put out?

A. I could not say.

Q. Could you form any idea?

A. I have no idea whatever.

Q. Did you see them drop the anchor?

A. Yes sir.

Q. Did the bridge move right along when it started to open?

A. Yes sir.

Q. There was no hitch whatever?

A. I noticed nine.

Q. How long a time elapsed between the time when the Norwood first whistled for the bridge and threw off her lines at the wharf until they threw out the anchor up near the pier of the bridge.

A. Well it was but a very few minutes it seems to me that the way the tide and wind was running it was flood tide.

Q. How many minutes?

A. I could not say as to minutes.

Q. What would you estimate it at?

A. Well if it was a thousand feet under slow bell and the way the tide was running in it must have been a minute or two anyway.

Q. A minute or two?

A. I should judge, I couldn't say for sure.

Q. From the time she left the G Street wharf what was the time elapsed in leaving that wharf and the throwing out of the anchor?

A. A few minutes.

Q. How many minutes, it may be material?

A. I should say eight minutes.

Q. Eight minutes?

A. Yes.

Q. Was the vessel well under control during all the time?

A. She appeared to be as far as I know.

Mr. HOGAN: That is all.

Redirect examination by Mr. Cross:

Q. This matter of time is matter of guess work with you is it?

A. Merely guess work with me.

A. I have no idea how long it takes the tide and wind the way it runs the rate it would go, I was paying attention to the bridge.

598 Q. Do you know how long she stopped at the time she blew her second whistle?

A. The tide was running in I could not tell what, she didn't seem to be going ahead but seemed to lose the headway that she had, the tide was carrying her along very rapidly.

Q. She stopped two minutes when she blew her second whistle. Stopped still?

A. Well the engine stopped working, I should judge that she lost headway.

Recross-examination by Mr. HOGAN:

Q. And what was the bridge doing?

A. I suppose they were working with that.

Q. What were they doing during these two minutes?

A. Well when I say two minutes I have reference to lapse of time. And the bridge started to open.

Q. You said you were six or eight hundred feet from the bridge you would not call that put positive would you?

A. When the bridge started to open up he started and thought he could make it all right and just got headway when she closed on him.

Q. What was the bridge doing during these two minutes?

A. I could not say as to that.

Q. What man did you see on the bridge?

A. I saw them on one end, I wasn't paying much attention I was there apparently making observation.

Q. You say your testimony in regard to time is more guess work, in regard to the features of time is merely guess work?

A. The time in every thing is close succession and is hard to space time.

Q. You think there is no guess work about measuring as there is about time?

A. In close continuation of one little instance after another.

That is all.

599 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Return and Certificate.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 23rd day of October, 1906, at the office of J. C. Cross, at the City of Aberdeen, Chehalis County, Washington, at the hour of nine o'clock of that day, pursuant to the stipulation hereunto attached and made a part of this certificate

and return, there being present the plaintiff in person, and his attorney of record, J. C. Hogan, Esq., and the defendants by their attorney J. C. Cross, there appeared before me C. D. Schwartz, a witness produced on behalf of the defendants, who being by me first duly sworn to testify to the truth, to the whole truth and nothing else but the truth in answer to such interrogatories as might be propounded to him as such witness, gave testimony as shown by this deposition, and the said deposition has been carefully read by me; that the reading of the said deposition to the said witness in his presence and in my presence and the signing of the said deposition by the said witness was in my presence, and in accordance with the stipulation, hereunto attached, waived by the parties hereto.

In witness whereof I have hereunto set my hand and official seal this the 26th day of October, A. D. 1906.

[SEAL.]

E. E. SHIELDS,

Notary Public in and for the State of Washington,

Residing at Aberdeen in said State.

600 Endorsed: 6330. A. J. West vs. John I. Martin et al.
Deposition of C. D. Schwartz. Published and filed November 9, 1906. W. C. Birdwell, Clerk; A. E. Graham, Deputy.

601 In the Superior Court of the State of Washington in and for
Chehalis County.

7005.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

Filed September 28, 1907. C. S. Reinhart, Clerk.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys of record herein that the deposition of May M. Dickey, a witness produced on behalf of defendants may be taken at the office of J. C. Cross, in the City of Aberdeen, Chehalis County, Washington, and before E. E. Shields, a Notary Public, on the 23rd day of October, 1906, commencing at the hour of nine o'clock, A. M. of said day, and continuing from day to day until completed; and that the deposition when so taken shall have the same force and effect as if taken upon notice duly and regularly given therefor.

That the plaintiff herein waives any and all formal notice for the taking of said deposition, and any and all irregularities relating to the taking of said deposition are hereby waived; the said plaintiff and the said defendants reserving to themselves the right to object and except to the materiality and sufficiency and relevancy

of any portion of said deposition or testimony, as to them or either of them, may seem right and proper; and such objections or exceptions may be urged for the first time by either of the parties hereto when the said deposition shall be offered or read in evidence. The reading and signing by the witness of the transcribed shorthand notes is waived.

602 In witness whereof, the parties hereto, through their respective attorneys, sign this stipulation in duplicate, this 23rd day of October, A. D. 1906.

J. C. CROSS,
Of Attorneys for Defendants.
JOHN C. HOGAN,
Attorney for Plaintiff.

603 In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,
vs.
JOHN I. MARTIN et al., Defendants.

Deposition of May M. Dickey.

MAY M. DICKEY, a witness produced on behalf of the defendant being first duly sworn to testify to the truth the whole truth and nothing else but the truth, was interrogated and testified as follows to-wit:

Direct examination by Mr. CROSS:

Q. Give us your name and age?

A. May M. Dickey, age thirty-one years.

Q. Were you on board the Norwood on the 7th day of May, 1906?

A. Yes, sir.

Q. What position were you filling on the vessel at that time?

A. I was first assistant engineer.

Q. Do you know who had charge of the engines on that vessel on the 7th day of May, while making the trip from the "G" Street Dock to the mill above the bridge?

A. I had charge of the engines. I was at the throttle.

Q. Who received the signals from the captain of the vessel at that time?

A. I received them.

Q. State if you know what signals were given, what signals received on leaving the "G" Street Wharf?

604 A. The first signal that I got was "astern slow", which I answered.

Q. Then what?

A. Just a short space of time I received signal to "stop", and a short time afterward, I received another signal "ahead slow".

Q. Did you comply with these several signals?

A. I did, yes, sir. I answered them back to the bridge by telegraph.

Q. Do you know who was captain, then master of the vessel Norwood?

A. Captain Martin was supposed to be, but whether he was or not, I do not know. I was in the engine room.

Q. Do you know what your next signals were?

A. After I went "ahead slow" for a short space of time, I got another bell to "stop".

Q. Did you answer it?

A. I answered it. Just a short time afterwards, I got a "full speed astern".

Q. Do you know where you were when you got the signal to "stop", as between the bridge and the wharf? from where you started?

A. No, sir, I do not know.

Q. From your position aboard the vessel, could you tell where you were on your course?

A. No, sir.

Q. During your course from the wharf to the mill, did you know when you passed through the bridge?

A. No, sir.

Q. Do you know how your vessel went through the bridge? Whether she went bow forward, or astern?

A. No, sir, I could not say.

Q. Was there anything occurred on making the course from the wharf to the wharf of the mill company that attracted your attention?

605 A. Nothing more than a slight noise that I heard. There was no jar or anything.

Q. What character of noise?

A. Sounded like the breaking of boards, or something of that kind. It sounded something like there might have been a joint blown out over the boilers. It stopped at once, and then I knew that there was nothing like that.

Q. Did you learn afterward what made that noise?

A. Not until I went upstairs, and alongside of the deck, then I saw the side of the ship was broken in, at the Aberdeen Mill, Lumber and Shingle Mill.

Q. What was the breaking that you observed?

A. Well, there were four or five planks on the side of the house that were broken in; that is as near as I can say, four or five, I suppose it was, I never counted them.

Q. Do you know when the vessel struck the bridge?

A. No, sir, I do not know when she struck the bridge.

Q. Did you feel any jar or vibration in making that course?

A. Not in the engine room where I was standing. I did not feel anything.

Q. State whether or not it is noticeable when the vessel itself strikes anything stationary with any degree of force?

A. Always notice it in the engine room.

Q. If she goes up to a dock pretty hard, when you are making dock?

A. Always notice it there.

Q. What are the effects that you notice?

A. Just a jar, and the shaking of some of the pipes, or something of that kind.

606 Cross-examination by Mr. HOGAN:

Q. You judge, that at the time that you heard the squeaking noise, like boards breaking, that that was the time that the boat struck against the bridge?

A. After I came up, and they told me that she had hit the bridge, then I thought that she must have struck the bridge at that time.

Q. You fix that time now as the time probable that the vessel struck the bridge?

A. Yes, sir.

Q. Was that the time that you got the bell for "full speed astern"?

A. The signal was a little before that. The engine was working, but which way the engine was going, I do not know, whether ahead or astern.

Q. When was it with reference to when you heard the squeaking noise, that you got the signal for "full speed astern"?

A. The engine was working full speed when I heard this noise.

Q. Then it must have been before that that you got the bell?

A. Yes.

Witness excused.

607 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Return and Certificate.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 23rd day of October, 1901, at the office of J. C. Cross, at the City of Aberdeen, Chehalis County, Washington, at the hour of nine o'clock of that day, pursuant to stipulation hereunto attached and made a part of this certificate and return, there being present the Plaintiff in person, and attorney of record, J. C. Hogan, Esq., and the defendants by their attorney, J. C. Cross, there appeared before me May M. Dickson, a witness produced on behalf of the defendants, who being by me first duly sworn to testify to the truth, to the whole truth and nothing else but the truth in answer to such interrogatories as might be propounded to him as such witness, gave testimony as shown

by this deposition, and the said deposition has been carefully read by me; that the reading and signing of said deposition was waived by respective counsel in my presence, and in accordance with the stipulation, hereunto attached, waived by the parties hereto.

In Witness Whereof I have hereunto set my hand and official seal this the 26th day of October, A. D. 1906.

[SEAL.]

E. E. SHIELDS,

*Notary Public in and for the State of Washington,
Residing at Aberdeen, in said State.*

608 Endorsed: 6330. In the Superior Court, County of Chehalis, State of Washington. A. J. West, Plaintiff, vs. John I. Martin et al., Defendants. Deposition of May M. Dickey. Published and filed November 9, 1906. W. C. Birdwell, Clerk. A. E. Graham, Deputy.

609 In the Superior Court of Washington in and for Chehalis County.

7005.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Stipulation.

Filed September 28, 1907. C. S. Reinhart, Clerk.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys of record herein that the deposition of William Anderson, a witness produced on behalf of defendants may be taken at the office of J. C. Cross in the city of Aberdeen, Chehalis County, Washington, and before E. E. Shields, a notary public, on the 23rd day of October, 1906, commencing at the hour of nine o'clock A. M. of said day and continuing from day to day until completed; and that the deposition when so taken shall have the same force and effect as if taken upon notice duly and regularly given therefore.

That the plaintiff herein waives any and all formal notice for the taking of the said deposition and any and all irregularities relating to the taking of the said deposition are hereby waived; the said plaintiff and the said defendants reserving to themselves the right to object and except to the materiality and sufficiency and relevancy of any portion of said deposition or testimony as to them or either of them may seem right and proper; and such objections or exceptions may be urged from the first time by either of the parties hereto when the said deposition shall be offered or read in evidence. The reading to and signing by the witness of the transcribed short-hand notes is waived.

In Witness Whereof the parties hereto through their attorneys sign this stipulation in duplicate this the 23rd day of October A. D. 1908.

J. C. CROSS,
Of Attorney- for Defendants.
JOHN C. HOGAN,
Attorney for Plaintiff.

610 In the Superior Court of Washington in and for Thurston County.

A. J. WEST, Plaintiff,
vs.
JOHN I. MARTIN et al., Defendants.

Deposition of William Anderson.

WILLIAM ANDERSON, a witness produced on behalf of the defendants being first duly sworn to testify to the truth the whole truth and nothing else but the truth was interrogated and testified as follows to-wit:

- Q. What is your age Mr. Anderson?
A. 24 years.
Q. Where do you live?
A. San Francisco.
Q. Are you acquainted with the steamer Norwood?
A. Yes sir.
Q. Do you occupy any position on that steamer?
A. Seaman.
Q. How long have you been a seaman?
A. 7 years.
Q. How long have you been a seaman on the steamer Norwood?
A. 7 months, 6 or 7 months.
Q. Were you a seaman on board the Norwood on the 7th of May last?
A. Yes sir.
Q. Where was the steamer at that time?
A. Aberdeen.
Q. What part of the work as a seaman were you performing that day?
A. We came into port, into Grays Harbor that day and discharged freight down to the Harbor Dock.
611 Q. What particular work if any, were you doing?
A. We were discharging freight in the forenoon about ten o'clock at the wharf here at the Harbor Dock.
Q. What time did the vessel come into port?
A. About ten o'clock in the forenoon.
Q. What time was it about, when was it when you got the freight discharged.

A. 10.30 or something like that, I could not say exactly, about half past ten.

Q. Were you acquainted with Captain Martin?

A. Yes sir.

Q. How long have you known him?

A. I have known him for a couple of years.

Q. Did you see him while you were discharging freight?

A. He was around the hatch and was on deck measuring chain lashing.

Q. Did you observe the passengers go from aboard that morning? come ashore?

A. Yes sir. I saw them come ashore except one and she was sick, a woman passenger.

Q. A woman passenger?

A. Yes sir.

Q. You say she didn't go ashore?

A. The captain had to pack her ashore. Captain Martin carried her.

Q. Captain Martin carried her ashore?

A. Yes sir from the state room to the wharf.

A. Where were you when the vessel let go at the wharf?

A. I was at the wheel.

Q. What part of the vessel is the wheel on, forward or aft?

A. On the pilot house in the fore part of the house.

Q. Where was the Captain when you swung loose?

A. On the bridge.

Q. Were you before or behind the Captain?

612 A. Before the Captain?

Q. How far is the Captain from where you were, how far is the bridge from the pilot house.

A. The bridge is about seven feet before the pilot house about six feet above the pilot house.

Q. And the Captain was kind of over how then?

A. About six feet aft.

Q. Could you hear what he said, could you hear anything he would say, in giving orders?

A. Yes he gave orders to me.

Q. The question is could you hear anything in relation to him giving orders?

A. Yes I could hear him.

Q. Giving orders?

A. Yes sir he was standing over here like.

Q. Did you hear him give any signals when he swung loose from the wharf, from the G Street dock?

A. Yes he blew the whistle.

Q. What was the signal?

A. One long and three short whistles.

Q. What did that whistle mean if you know?

A. That means to open the bridge.

Q. Did you know where the vessel was intending to go, when it left the G Street wharf?

- A. Yes sir.
- Q. Where?
- A. To same place she was before. The Western mill.
- Q. Do you know the name of the mill?
- A. No sir.
- Q. Was it a mill before or below the bridge?
- A. Before the bridge.
- Q. What direction did the vessel take when she left the G Street wharf?
- 613 A. She headed up stream to the bridge.
- Q. How was she moving as to speed?
- A. She was keeping steerage *was* slow speed, when she left wharf, enough to steer.
- Q. Enough to steer is that what you mean?
- A. Yes sir.
- Q. Was there any one else at the wheel besides you?
- A. Yes another fellow.
- Q. Do you know his name?
- A. Yes his name is Olaf, that is all I know him by.
- Q. Do you know where he is now?
- A. Yes sir down in Australia.
- Q. Did you see the bridge when you left the G Street wharf?
- A. Yes sir.
- Q. How was it opened or closed?
- A. Closed.
- Q. Were you at the wheel from the time she left the wharf she made her landing at the mill wharf above the bridge?
- A. Yes sir.
- Q. Were there any whistles blown from the time she left Street wharf until she got to the bridge?
- A. Yes sir about half ways between the wharf and the bridge.
- Q. About half ways?
- A. Yes sir.
- Q. What were those whistles?
- A. One long and three short whistles.
- Q. Did you observe the bridge at that time?
- A. Yes it was starting to move open.
- Q. Starting to move open?
- A. Yes sir.
- Q. What if any, orders did you get between the first and second whistles?
- A. I was keeping her straight course.
- 614 Q. Do you know which side of the bridge he was in to pass through?
- A. Yes he was heading for the north side, the left hand side.
- Q. The left hand?
- A. Yes.
- Q. What if anything did you observe, about the bridge after second whistles were blown.
- A. The bridge opened part way.
- Q. Do you know which way it started to open?

A. It opened up the stream, up the river.

Q. Up the river?

A. Yes sir.

Q. Well here is a photograph, do you recognize the bridge from that photograph?

A. Yes sir.

Q. Do you know which is the swinging span and which is stationary?

A. Yes sir.

Q. Do you recognize the position the bridge was in, from that photograph, when you first saw it?

A. Yes same as it is here.

Q. Same as on the picture?

A. Yes sir.

Q. How was she when she whistled the second time?

A. She swung that way. (Indicating on the photograph.)

Mr. Cross: We would ask that the photograph be identified as Plaintiff's Identification One in this testimony.

Q. Now will you make a little cross mark at the end of the bridge that you say swung up the river, when she first opened?

A. Yes sir. (Indicates and Marks on photograph.)

Q. What if any thing did the vessel do after the second whistles?

A. Well she practically came to a stand still at the second whistles.

Q. Then what did they do?

A. The bridge commenced to open she was going ahead again after the bridge commenced to open.

Q. From where you were could you see about how far the bridge opened, were you watching the bridge?

A. I was watching the bridge about ten or fifteen feet, or something like that I am not sure.

Q. What, if anything did the bridge do after that?

A. It swung back again the same way and it was before it started to swing.

Q. Closed up?

A. Closed up yes it came back the same way, this way or swung back again.

Q. What, if anything did the Captain do when the bridge came back?

A. He ordered helm hard to port.

Q. He ordered helm hard at port?

A. Yes sir.

Q. What did you do?

A. I put the helm hard at port.

Q. How far were you from the bridge when——

A. Two or three hundred feet, I think.

Q. Two or three hundred feet?

A. Yes sir.

Q. In what direction did that send the vessel when you pulled her hard at port?

A. Starboard, to the right hand.

Q. Did you observe what the bridge did while you were holding the vessel across the stream?

A. It came back, swinging that way and opening to the other side (Indicates.)

Q. That is the hand where you marked the cross, swung first up the stream?

A. Yes sir up the stream.

Q. Then which way?

A. The same end came down the stream.

Q. Where was the vessel when the bridge finally opened?

A. The vessel was laying — anchor in the stream.

Q. In the stream?

A. Yes sir.

616 Q. How was she standing as to her bow up or down the stream?

A. Part down, heading down the stream.

Q. Now could you tell from looking at this picture about where the vessel was? Could you take a pencil and mark about the course she took and about where she was standing when the bridge opened?

A. Yes sir.

Q. As nearly as you can.

(Indicated with pencil.)

Q. Where was the stern of the vessel when the anchor was cast?

A. While the stern was heading that way.

Q. You mean toward the bridge?

A. I could not say exactly as to the stern, I was in the wheel house and could not see the stern.

Q. Did you hear the captain give any orders as to the anchor?

A. Yes sir.

Q. What did he say?

A. He told the chief to let go of the anchor.

Q. Which anchor did he cast?

A. The starboard anchor.

Q. Did the anchor take hold?

A. I don't think so there was strong wind and tide, she drifted with the anchor a little, drug the anchor.

Q. Drug the anchor?

A. Yes sir.

Q. How did she go through the bridge?

A. She came stern first.

Q. Went through stern first?

— Yes with stern first.

Q. Were you watching to see what position the vessel was in relative to the stationary span of the bridge, this other span over here.

A. I didn't watch it.

Q. Do you know how the vessel struck the bridge? The swinging span opened with the south end up stream?

A. Yes sir.

617 Q. The stern of the vessel swung into the opening.

A. Yes into the opening.

And struck the corner of the stationary span?

Yes it struck the planking on the alley ways a little abaft of the
ip.

How did the vessel relieve herself from the bridge?

The Captain backed the vessel *was* out and then haul- taut the
or tightened the chain.

Did that tightening of the chain swing the vessel away from the
?

Yes sir it cleared the bridge.

Cleared the bridge?

Yes sir.

Did you see any signals out or about the bridge?

Yes sir I seen the signals I seen the flag there once?

Where was that?

On the bridge. On the south end of the bridge about here.
(Indicated on the photograph.)

South end of the swinging span?

Yes half way to the south end.

Just make a little circle where you saw the men with the flag?

(Indicated on the photograph.)

Now we would have this marked Plaintiff's Exhibit I. Now
you mark there Mr. Anderson just make a little arrow the direc-

here she finally opened on the south side.

The time she struck the bridge?

The way that it finally opened.

(Indicated with arrow.)

Where was the vessel when you first saw the flag?

I don't know the distance, a couple of hundred feet.

State whether or not you observed the flag before or after the
began to open.

A. I only saw the flag once, and that time the bridge swung
back I didn't notice the flag before.

Q. You didn't notice the flag before the bridge moved or
back?

No.

How was the flag displayed on the bridge or in some one's

A. In some one's hand, some one was standing there on
the bridge. I did not notice the flag before.

Q. You didn't notice the flag before the bridge moved or
back?

No.

How was the flag displayed on the bridge or in some one's

In some one's hand, some one was standing there on the

Cross-examination by MR. HOGAN:

What time did you get into port that time, Mr. Anderson?

About ten o'clock.

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Q. What time was it you whistled the first time for the bridge open?

A. It was half past ten or something like that.

Q. How long did it take you to run from the wharf where cast off your line to where you cast anchor near the bridge?

A. I could not tell the time.

Q. How many minutes did you consume in making that from the wharf to where you cast your anchor?

A. I do not know the distance between the wharf and where cast anchor.

Q. Now the question is, how long a time did it take you to from the wharf, where you first whistled for the bridge, to the place where you cast out your anchor?

A. I could not tell you, I do not know how long a time it was.

Q. Would you say that it took one half an hour?

A. I am not sure.

Q. What would be your judgment as to the time it took.

A. I could not tell; forty minutes or something like that, I am not sure of it.

Q. You would estimate that time as forty minutes?

A. Yes sir.

Q. Now when you started out from the wharf after whistling for the bridge there were two of you at the wheel?

620 A. Yes.

Q. Yourself and a man named Olaf?

A. Yes.

Q. And you say Olaf is in Australia?

A. Yes.

Q. When did you last see him?

A. This spring, he shipped on board the Steamer J. B. Stetson. He shipped in a sailing vessel going to Australia.

Q. You two were in the pilot house, you and Olaf.

A. Yes.

Q. Was there anybody else in the pilot house?

A. No sir.

Q. Do you know whether anybody else was in the pilot house any time while you were making that run from the wharf to the Mill?

A. No that time only us two.

Q. Captain Martin was on the bridge?

A. Yes, sir.

Q. Was there anybody else on the bridge with Captain Martin?

A. Another man, a captain on one of the vessels, the John C. Meyer, I think was the name of the vessel.

Q. You say that Captain Martin was on the bridge, and you saw him, was the captain of the John C. Meyer, is that your answer?

A. Not that I saw.

Q. Do you say—did you see anybody else on the deck of the vessel during that run?

A. The crew was working around the deck.

Q. The crew were forward?

A. Yes.

Q. Who were the members of the crew?

A. Seven or eight altogether.

Q. Eight including yourself. From that eight men including yourself?

621 A. Yes sir.

Q. Do you know their names?

A. Some of them I do; some of them I have forgotten their names.

Q. Give the names of those you know?

A. Nels Westburg.

Q. What was his position?

A. After ~~wench~~ driver.

Q. Who else?

A. A fellow named Martin.

Q. What was his position?

A. Port wench driver.

Q. Who else?

A. I cannot remember their names at the present time; they stayed on the steamer for a trip, for a few days; and then they go again. I cannot tell you who the rest were.

Q. Were there any passengers on board?

A. I do not know whether — any passengers on board at that time or not.

Q. How many men composing that crew at that time are on the vessel now?

A. Only myself.

Q. Only you of all that were there then?

A. Yes sir.

Q. Where are the others?

A. I do not know where the others are just now—one in Australia.

Q. You are still working aboard of the Norwood?

A. At the present time.

Q. At the present time?

A. Yes sir.

Q. You have been with her ever since the accident?

A. No sir.

622 Q. When did you quit the Norwood after this trip of the 7th day of May?

A. Went down south and back to San Francisco, and left her then.

Q. Left her then, when did you come back to her?

A. Third of September.

Q. You have been with her since the third of September?

A. Yes sir.

Q. And you say that there are none of that crew except yourself?

A. No sir.

Q. Aboard of the Norwood at the present time?

A. No sir all of the sailors.

Q. Are there any of the officers besides the engineer with her?

A. No sir.

Q. None of them are there now?

A. Not in the deck department.

Q. How far were you from the bridge when you blew the second whistle for the bridge?

A. Half ways between the bridge and the wharf.

Q. How far would that be from the bridge?

A. I don't know have no estimation at all; I could not tell, the distance between that.

Q. Could you estimate the distance?

A. No sir I could not estimate the distance.

Q. Would you say a thousand or fifteen hundred feet?

A. No sir I could not say any thing about it.

Q. Was it more than one hundred feet?

A. Yes.

Q. How much more?

A. Seven or eight hundred feet.

623 Q. Seven or eight hundred feet?

A. Yes sir.

Q. How far were you from the wharf where you left when you blew the second whistle?

A. Seven or eight hundred feet.

Q. When you blew the second whistle and were seven or eight hundred feet from the bridge you were headed towards the north opening of the bridge?

A. Yes sir.

Q. And the bridge at that time you blew the second whistle had not started to open at all up to that time?

A. No sir.

Q. Had not started to move at all?

A. No sir.

Q. How many feet ahead did the vessel move after blowing the second whistle before the bridge started to open?

A. I could not tell you exactly.

Q. Would you say that it had moved one hundred feet after blowing the second whistle before the bridge started to move at all?

A. The bridge started to open immediately after blowing the second whistle?

Q. The bridge started to open immediately after blowing the second whistle?

A. Yes sir.

Q. Now if the bridge had continued to open as she started to open after you blew the second whistle, and you had continued your course with the vessel, you would have made the opening on the north side without any trouble?

A. Yes sir.

Q. There was plenty of time for that?

A. Yes sir.

624 Q. How far forward did the vessel move after blowing the second whistle before the bridge started to swing shut again?

A. Three or four hundred feet.

Q. Three or four hundred feet?

A. Yes.

Q. How far were you from the bridge when you started to change the course of the vessel?

A. Two or three hundred feet.

Q. You mean by that the bow of the vessel was two or three hundred feet from the pier of the bridge or the bridge?

A. From the bridge running across.

Q. And where were you when you started to change your course? With reference to the swinging pier on which the span of the bridge rests?

A. I cannot tell; I cannot tell anything about that.

Q. Did you see the swinging pier of the bridge at the time you changed the course of the vessel?

A. The swing pier is the middle of the bridge.

Q. I mean by the swinging pier the long resting pier on which the bridge rests when it is swung open. Up and down the river?

A. Yes I could see that.

Q. How far were you from the lower end of that when you changed the course of the vessel?

A. About two hundred feet.

Q. About one hundred feet?

A. No sir about two hundred feet, or something like that.

Q. You were two hundred feet down stream from the lower end of that resting pier of the bridge?

A. Some thing like that I could not tell exactly.

Q. But that is your judgment?

25 A. Yes sir.

Q. On which side of the pier were you, north or south.

A. A little to the north.

Q. At what rate of speed was the vessel going at this time?

A. Just going slowly ahead.

Q. How many miles an hour was she making?

A. I could not tell.

Q. Could you form any estimate of the speed that she was making?

A. No sir because the tide was strong, and the wind was blowing pretty strong, so that I cannot tell how fast she was going. There was a strong wind and a strong tide.

Q. Did you take any notice at that time of the speed that she was making?

A. Of the speed she was going slow ahead.

Q. What do you call slow ahead?

A. A vessel going ahead slow.

Q. Going at that rate, how long would it take her to go five miles.

A. In smooth water?

Q. Yes as they were then going, the way she was?

A. I could not tell, too strong a tide and a strong wind. In smooth water it would take about one and one quarter of an hour.

Q. About an hour and a quarter to go five miles?

A. Smooth water, and without any wind or tide.

Q. Taking conditions as they were at that time, and going at speed the vessel was going, how long would it take the vessel make five miles, at the speed she was going?

A. I could not tell.

Q. You cannot tell?

A. No sir.

Q. Why did you blow the second whistle?

626 A. Where.

Q. Why.

A. Because the bridge did not open on the first whistle.

Q. Who blew the whistle?

A. The captain

Q. The captain?

A. Yes sir.

Q. You were looking at the bridge at the time the second whistle blew?

A. Yes sir.

Q. Did you see any flag at that time.

A. No sir.

Q. You did not?

A. I did not notice any flag?

Q. Did you look?

A. I was looking at the bridge; I was looking at the opening.

Q. Looking at the opening?

A. Kept the vessel straight for the passage through there.

Q. And you didn't see any flag before that?

A. No sir.

Q. If there had been a flag out there you would have seen it?

A. I didn't take any notice of the flag, any particular notice of it.

Q. Where were you when you first saw the flag?

A. I was in the pilot house.

Q. Where was the ship?

A. The ship was a couple of hundred feet.

Q. A couple of hundred feet from the bridge?

A. From the bridge, a couple or three hundred feet from the bridge.

Q. And this flag was in a man's hand, was it?

A. Yes.

627 Q. And had a staff on it, on a pole, and was waving?

A. Yes sir.

Q. Did you recognize that man?

A. No sir, I was too far off to recognize the man.

Q. Was he a young man or an old man?

A. Why, I could not tell; too far off, too far distant.

Q. You could not tell whether he was a light complected man or dark?

A. No sir.

Q. Did he have a beard?

A. I could not tell.

Q. You were too far off to tell these things, were you?

A. Yes.

Q. What sort of a flag was it?

A. A red flag.

Q. How big was it?

A. It looked to me like it was about a foot and a half square.

Q. How long did this man waive this flag.

A. A couple or three times like that (Indicating).

Q. What did he do with the flag then?

A. I took no particular notice of it after that time.

Q. You don't know or remember what he did with the flag?

A. No sir.

Q. Now you say the span of the bridge—which way did the bridge open for the vessel to go through, when she finally went through?

A. Which way she opened?

Q. I will ask you to state which way did the south end of the bridge open?

A. Up the stream.

Q. The south end of the bridge moved up the stream?

A. Yes sir.

628 Q. And the north end of the bridge moved down the stream?

A. Yes sir.

Q. Now when the bridge first started to move immediately after blowing the second whistle, you say the north end of the bridge moved in the northerly direction?

A. Moved up the river?

Q. Moved up the river

A. Yes.

Q. And after moving up the river about twelve or fifteen feet?

A. Ten or fifteen feet.

Q. Ten or fifteen feet, the north end of the bridge moved back and opened with the north end down stream?

A. Yes sir.

Q. How many minutes was it from the time you changed the course of the vessel to the time the captain ordered the anchor cast out?

A. I cannot remember.

Q. How many minutes in your judgement?

A. I cannot tell.

Q. Was it five or ten minutes?

A. I cannot tell anything about that. I was tending to the wheel during that time. I turned the wheel hard to port.

Q. Would you form any estimate of that time?

A. I could not give it certain.

Q. Where was the vessel when the north end of the bridge commenced to swing off the pier towards the south?

A. Didn't swing to the south.

Q. To the west I mean?

A. Down the river.

Q. Yes down the river?

A. What position the vessel was in?

Q. The question is, what position was the vessel in when the north
end of the bridge commenced to swing down the river, and
629 and off the pier, at this point in the picture where you have
marked with the "X"?

A. She was swinging to the starboard.

Q. Where was the vessel lying then?

A. She was turning going hard to the port helm.

Q. Now indicate on this picture, when the bridge started to swing
to the south, off her pier, where you have marked with the letter
"X", where was the vessel?

A. At the time that the vessel commenced to swing backward, the
north end of the bridge commenced to swing down the river.

Q. Yes.

A. The vessel was about here.

Q. Will you mark that with the figure "1", there with the pen?

A. All right sir. (Witness marks.)

Q. Then when the north end of the bridge commenced to move
towards the west and left the supporting pier at the point marked
on the picture with the letter "X", the vessel was in the position in-
dicated by the figure "1" over the initials W. A. on this picture
was it?

A. Yes sir.

Q. And the vessel was then distant from the span of the bridge
or from the swinging pier on which the bridge rests, how many
feet?

A. From the swinging pier of the bridge a couple of hundred feet.

Q. From the lower end of the swinging pier was two hundred feet
West of that and a little north?

A. A little north.

Q. In the north channel?

A. Yes a little to the north.

Q. When the bridge started to move with the north end toward
the west, did she move right along without any stop or halt?

630 A. She moved right along.

Q. She moved right along?

A. Yes.

Q. Did you notice how near open the bridge was, when you had
changed your vessel around to the south and got immediately west
or amidship of the west end of the pier on which the bridge rests?

A. I could not tell how much the bridge was open.

Q. How much was the bridge open when you started to cast
anchor?

A. I could not tell you how much it was open, I was in the pilot
house and could not see the bridge.

Q. How much open was the bridge when you last saw it, when
you were making the turn there?

A. I could not tell exactly how much she was open, she was
swinging and the bridge kept swinging with her, I could not tell
how much she was open.

Q. Have you any impression in your mind now as to how much the bridge was open when you last saw the bridge, when you were making the curve to the south?

A. I could not tell how much that was.

Q. How many feet were you when you saw it moving off?

A. She was moving right along.

Q. Was she moving at good fair speed?

A. Yes going pretty fast.

Q. Was it moving as fast as it ordinarily does, I mean the bridge?

A. I do not know.

Q. You don't know what ordinary speed is?

A. No.

Q. You say the bridge moved right along, and came pretty fast? when you last saw it?

A. Yes.

631 Q. When did you last see it between the time you last saw it, and the dropping of the anchor?

A. The vessel was swinging around this way (indicating) with the helm at "hard to port;" I could not see anything for the vessel swinging.

Q. Now you saw the bridge, and saw it move, and saw it for the last time before casting the anchor?

A. Yes sir.

Q. Your attention was then drawn to your work, and you did not observe the bridge?

A. Yes.

Q. How many feet did you say you turned from the time you last saw the bridge until you cast your anchor?

A. I could not say.

Q. Would you say two hundred feet?

A. I could not tell.

Q. Was it more than one hundred feet?

A. I could not tell anything about that.

Q. Was it a minute of time or five minutes of time?

A. I could not tell the time, I was paying attention to the wheel.

Q. When the captain called to cast the anchor did he do that by a bell or by speaking?

A. By speaking.

Q. After casting out the anchor, did the captain give any other signal or order?

A. I did not hear any other orders.

Q. Did he give any order to back the vessel up?

A. No she was backing at the time.

Q. She was backing at the time?

A. Yes sir.

632 Q. Before the anchor was cast?

A. She was going ahead at the time that the anchor was cast, after the anchor was cast she backed to tighten up the chain, after she had swung under the bridge.

Q. When did he give the order for "full speed backward" was that after?

A. I do not know she was going full speed after the anchor cast.

Q. The propeller was driving her back after the anchor was

A. Yes sir.

Q. You cannot say whether that was full speed or not?

A. No sir.

Q. What do you think about that?

A. I could not tell anything about.

Q. How far from the south pier of the bridge was the boat at the time she cast anchor—this pier that was damaged?

A. I could not tell you.

Q. Would you say that it was a hundred feet or two or three hundred feet?

A. I could not say as the vessel headed down the stream; I did not see.

Q. The vessel at the time was headed down the stream at the time she cast anchor or practically so?

A. Practically so.

Q. And you could not tell how far she was from the bridge?

A. No sir.

Q. You would not make any estimate as to how far she was from the bridge?

A. No sir.

Q. Could you see the bridge from where you were in the house when the anchor was cast?

633 A. No sir.

Q. You could not?

A. No sir.

Q. That would indicate that you had rounded a curve and practically got headed down stream?

A. Yes sir.

Q. Before the anchor was cast?

A. Yes sir.

Q. Was the vessel in good control; was the vessel in good control of her machinery?

A. Yes as far as I know.

Q. Every thing working on board of the vessel all right?

A. Yes sir seemed to.

Q. There was no time when the vessel got helpless?

A. No sir.

Q. About what time of day was it when you cast anchor? when the vessel came in contact with the pier of the bridge?

A. I could not tell exactly what time it was. It was in the afternoon.

Q. Did you see Mr. Schwartz on board of the vessel that day?

A. Yes sir.

Q. Was he on board at this time?

A. Yes he was on board.

Q. Was he working on board of the vessel?

A. No sir.

Q. Was he a passenger?

A. As far as I know he was a passenger?

Q. Where did he come from?

A. He came from San Pedro, I think it was San Pedro.

Q. Did he make a trip up with you last trip?

A. At the time the accident happened.

Q. Did he come up on the last trip of the Norwood?

A. Yes sir.

34 Q. How many trips has he made on the vessel since the 7th of May?

A. That I don't know. I haven't been on board the vessel since this time but one.

Q. How many trips do you know of his making on the vessel?

A. This trip and the trip before.

Q. Are you personally acquainted with him?

A. No sir.

Redirect examination by Mr. Cross:

Q. When you say there is no one on the vessel now that was not on the vessel at the time of the accident, what class of, or what part of the crew do you have reference to?

A. To the deck department, to the sailors.

Q. This engineer that is with you here is the engineer that was with her then?

A. Yes sir I think there is two or three engineers.

Q. In your cross examination you state the vessel struck the pier of the bridge, what do you mean when you say the vessel struck the pier of the bridge.

A. She swung on the bridge the corner of the bridge.

Q. Did the vessel hit the pier, that is the part that it rested on or the superstructure that was on top of the pier?

A. I could not tell what she struck, she struck the corner of the south span.

Q. Struck the corner of the south span?

A. Yes.

Recross-examination by Mr. HOGAN:

Q. What is the length of the swinging span of the bridge, the total length?

A. I do not know sir.

Q. What in your judgment is the length?

A. The swinging span?

Q. Yes?

A. 350 or 400 feet.

35 Redirect examination by Mr. Cross:

Q. That is just a guess on your part?

A. A guess, yes sir.

Recross-examination by Mr. HOGAN:

Q. You make that statement from your recollection when saw it on that day?

A. Yes sir.

Witness Excused.

636 In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Return and Certificate.

STATE OF WASHINGTON,
County of Chehalis, ss:

Be it remembered that on this the 23rd day of October, 1906 the office of J. C. Cross, at the city of Aberdeen, Chehalis County Washington, at the hour of nine o'clock of that day, pursuant to stipulation hereunto attached and made a part of this certificate of return, there being present the Plaintiff in person, and his attorney of record, J. C. Hogan, Esq., and the defendants by their attorney J. C. Cross, there appeared before me William Anderson, a witness produced on behalf of defendants, who being by me first duly sworn to testify to the truth, to the whole truth and nothing else but the truth in answer to such interrogatories as might be propounded him as such witness, gave testimony as shown by this deposition, and the said deposition has been carefully read by me; that the reading of the said deposition to the said witness in his presence and in the presence and the signing of the said deposition by the said witness was in my presence, and in accordance with the stipulation, hereto attached, waived by the parties hereto.

In witness whereof I have hereunto set my hand and official seal this the 26th day of October, A. D. 1906.

[SEAL.]

E. E. SHIELDS,

*Notary Public in and for the State of Washington,
Residing at Aberdeen, in said State*

637 Endorsed: # 6330—In the Superior Court, County of Chehalis, State of Washington. A. J. West, Plaintiff, John I. Martin, et al., Defendants. Deposition of William Anderson. Published and filed, November 9, 1906. W. C. Birdwell, Clerk. A. E. Graham, Deputy.

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PL'T'F'S EX. 2.

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
WASHINGTON, November 30, 1903.

Maj. John Millis, Corps of Engineers, Seattle, Wash.:

MAJOR: 1. There is sent you herewith a copy of *all* instrument, dated the 19th instant, expressing the approval of the War Department of plans for a bridge prooposed to be built across the Chehalis River within the limits of Aberdeen, Wash., by the city of Aberdeen.

2. Your attention is invited to the conditions upon which this approval is given, and you will supervise the construction of the bridge so far as may be necessary, in order that it may be built in accordance with the approved plans, reporting to this office at the proper time whether it is so constructed.

By command of Brig. Gen. Gillespie:

Very respectfully, your obedient servant,

H. F. HODORS,
Major, Corps of Engineers.

47761/5.

Inclo. 3 & copy of inclo. 9 accomp'g, in separate roll.

Indorsed: U. S. Engineer Office, Nov. 30, 1903. Chief of Engineers. Fwds. approval of Sec. War of Nov. 19th of plans of City of Aberdeen bridge across Chehalis River & directs supervision.

No. 6330. In the Superior Court of the State of Washington for Chehalis County. 7004. A. J. West, Plaintiff, vs. Capt. John I. Martin et al., Defendant. Filed Sep. 28, 1907. C. S. Reinhart, Clerk.

Pl'ff Ex. 2. Filed Nov. 7, 1906. W. C. Birdwell, Clerk.

38a 7044/9. (Form No. 3.)

Whereas, By Section 9 of an act of Congress, approved March 3, 1899 entitled "An act making appropriations for the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes," it is provided that bridges, dams, dikes, or causeways may be built under authority of the legislature of a state across rivers and other waterways the navigable portions of which be wholly within the limits of a single state, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced;

And whereas, the city of Aberdeen, Washington, having authority of the legislature of the State of Washington to construct a bridge across the Chehalis River, within the limits of said city, in said

state, has submitted a map of the location and plans of the same, which have been approved by the Chief of Engineers;

Now, Therefore, This is to certify that the map of location and plans of said bridge, which are hereto attached, are hereby approved by the Secretary of War, subject to the following conditions:

1. That the engineer officer of the United States Army, in charge of the district within which the bridge is to be built, may supervise its construction, in order that said plans shall be complied with.

2. That such change shall be made in the position of the draw-span as, in the judgment of the district engineer officer, may be necessary to place the draw-openings in the best position with respect to the channel.

Witness my hand this Nineteenth day of November, 1903.

[SEAL.]

ROBERT SHAW OLIVER,

Ass't Secretary of War.

Copt of 47761/9.

(Here follows map marked p. 638b.)

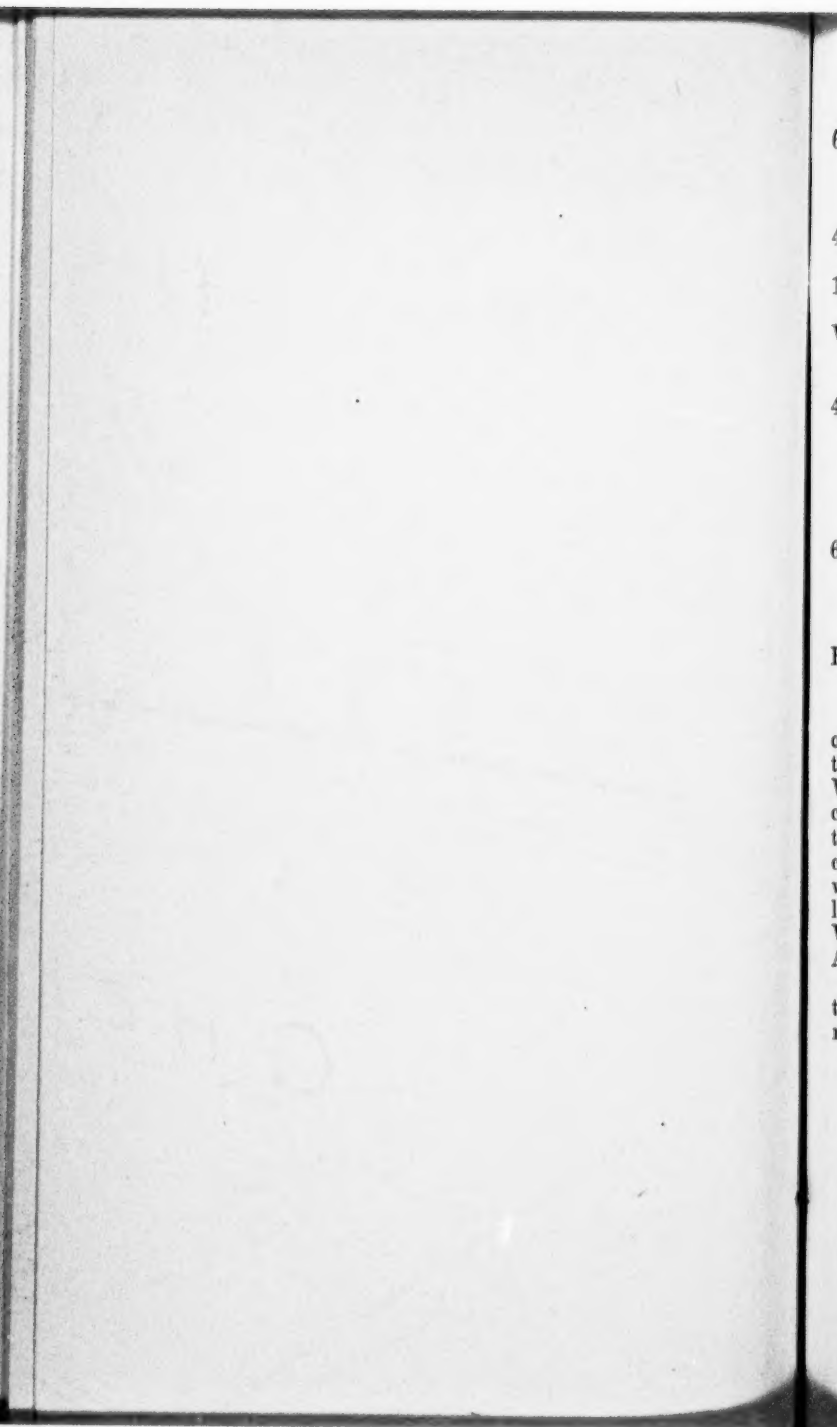
MAP

TOO

LARGE

FOR

FILMING



638b

Indorsement of Plaintiff's Exhibit I.

Office of the Secretary War Department. Jul-13, 1903. 4674. 3.
Office of Chief of Engineers War Department. Jul-13, 1903.
47761/3.

U. S. Engineer Office, Seattle, Wash. Rec'd Dec. 7, 1903. B. O.
1074/10.

Pl'tf Exhibit I. #6330. West vs. Martin. Filed Nov. 7, 1906.
W. C. Birdwell, Clerk.

Office of the Secretary War Department Jul-13, 1903. 4674/3.
Office of Chief of Engineers War Department Jul-13, 1903.
47761/3.

U. S. Engineer Office, Seattle, Wash. Rec'd Dec. 7, 1903. 7004.
Filed Sep. 28, 1907. C. S. Reinhart, Clerk.

Chehalis River Bridge City of Aberdeen plans.

639

PL'T'F'S EX. 3.

B. O.

UNITED STATES ENGINEER OFFICE,
SEATTLE, WASHINGTON, *March 18, 1905.*

Brig. Gen. A. Mackenzie, Chief of Engineers, U. S. Army, Wash-
ington, D. C.

GENERAL: 1. Referring to indorsement of the Chief of Engineers
of March 7, 1905 (47761/12) on my letter of February 28th relative
to bridge across the Chehalis river to be constructed by Mr. A. J.
West of Aberdeen, Wash., I have the honor to forward herewith
copy of my letter of this date to Jun. Engr. E. L. Carpenter, relative
to this bridge. As this will show, it is proposed to commence the
construction of the bridge under the terms of the existing authority,
which has not yet been modified. I have also sent a copy of the
letter to the City of Aberdeen and explained to them and to Mr.
West that the work must be understood to be done by the City of
Aberdeen as now authorized not by any individual.

2. The proposed modification of plans consists only in increasing
the lengths of some of the spans and this will be advantageous to
navigation interests. I hope the action can be approved.

Very respectfully, your obedient servant,

JOHN MILLIS,
Major, Corps of Engineers, U. S. A.

I inclos.

w 1.

A true copy.

E. L. PANGBOURN,
Chief Clerk.

639b

1st Indorsement.

War Department, Office of the Chief of Engineers, Washington, March 25, 1905. Respectfully returned to Major Millis, whose action is approved. To be returned. By command of Brig. Gen. Mackenzie, H. F. Hodges, Major, Corps of Engineers. 47761/17.

2nd Indorsement.

U. S. Engineer Office, Seattle, Washington, April 1, 1905. Respectfully returned to the Chief of Engineers, U. S. Army. John Millis, Major, Corps of Engineers. 7074/29. B. O. A True Copy, E. L. Pangbourn, Chief Clerk.

Indorsed: 7074/29. B. O. Mar. 30, 1905. Seattle, Mar. 18, 1905. Millis, John, Major. Requests approval of action taken in matter of proposed Chehalis River bridge to be built by Mr. A. J. West of Aberdeen.

No. 6330. 7004. A. J. West vs. Capt. John I. Martin. Filed Sep. 28, 1907. C. S. Reinhart, Clerk.

Pl'ff's Exhibit 3. Filed Nov. 7, 1906. W. C. Birdwell, Clerk.

(Here follows diagram marked p. 640.)

MAP

TOO

LARGE

FOR

FILMING

1897

Jan 1st - 1897
Feb 1st - 1897
Mar 1st - 1897
Apr 1st - 1897
May 1st - 1897
Jun 1st - 1897
Jul 1st - 1897
Aug 1st - 1897
Sep 1st - 1897
Oct 1st - 1897
Nov 1st - 1897
Dec 1st - 1897

An Ordinance granting to Arnold J. West, his associates, successors and assigns, the right and privilege to construct, maintain and operate a toll bridge across the Chehalis river within the city of Aberdeen from Benn street in Samuel Benn's Original Plat of said city to Boone street in South Aberdeen.

The City Council of the City of Aberdeen do Ordain as follows:

SECTION 1. There shall be and there hereby is granted to Arnold J. West, his associates, successors and assigns, the right and privilege to construct, maintain and operate a toll bridge across the Chehalis river within the city of Aberdeen, from the southerly end of Benn street in Samuel Benn's Original Plat of the town, now city, of Aberdeen, to the northerly end of Boone street in South Aberdeen, an addition to the City of Aberdeen. The bridge so to be constructed shall be a draw bridge or a swing bridge with such provision made for the opening of a span or spans thereof, for the purposes of navigation on the said Chehalis river, as shall meet with the approval of the war department of the United States and shall be of sufficient width, size and strength to admit of the free passage thereon of passengers, teams, vehicles and stock and all ordinary travel and be provided with four foot walk on each side for foot passengers. The right and privilege is hereby granted to the said Arnold J. West, his associates and assigns, to construct upon the streets hereinbefore mentioned, proper approaches to the said bridge and to maintain such approaches upon such grade or elevation as may be necessary.

SEC. 2. The further right and privilege is hereby granted to the said Arnold J. West, his associates, successors and assigns, to charge and collect from persons using said bridge, the following rates of toll thereon, to wit:

Two horse team and vehicle, one way, 25 cents: round trip, 40 cents; 1 horse and vehicle one way, 15 cents, round trip 25 cents; Each additional animal in team more than two, 5 cents additional each way.

Foot passengers, 5 cents each way; cows, horses, oxen, bulls mules or asses without vehicles, 5 cents each for one way; with vehicles, same as horse teams. Sheep, goats or swine, if ten or more pass at one time, one cent each; if any number less than ten pass at any one time, 10 cents. And in case any electric railway line should be extended across such bridge, each car shall pay a toll of 15 cents each way and 2½ cents for each passenger carried across such bridge.

The rates of toll herein fixed are maximum rates and the said grantee, his associates and assigns, shall be at liberty to fix the rates of toll to be charged, provided such rates so fixed do not exceed the maximum rates herein provided for. In cases where the maximum rates of toll are not expressly fixed by this ordinance, the said grantee, his associates and assigns, shall have the right to fix the rates of toll.

SEC. 3. The rights and privileges herein granted shall continue for the period of 50 years.

SEC. 4. This ordinance shall become void and the rights hereby granted, shall cease and be at an end, unless the said A. J. West, grantee, his associates or assigns, shall within ninety days deposit a forfeit of \$1,000 that they will commence in good faith the work of constructing said toll bridge within six months after the date of the passage and approval of this ordinance and shall have completed the same within one year after the passage and approval of this ordinance. Delays by strikes or other unavoidable causes excepted.

641½ SEC. 5. This ordinance shall be in force from and after its passage, approval and publication.

Passed January 25th, 1905.

Approved January 25th, 1905.

J. LINDSTROM, *Mayor*.

Attest:

[SEAL.] P. F. CLARK, *City Clerk*.

STATE OF WASHINGTON,
County of Chehalis, ss:

I, P. F. Clark, City Clerk of the City of Aberdeen, do hereby certify that the annexed and foregoing is a true and correct copy of Ordinance No. 448 of the City of Aberdeen, Chehalis County Washington.

Witness my hand and seal of said city November 7, 1906.

[SEAL.]

P. F. CLARK,
City Clerk.

Endorsed: 7004. Filed Sep. 28, 1907. C. S. Reinhart. In the Superior Court of the State of Washington, for Chehalis County. A. J. West, plaintiff, vs. Capt. John I. Martin, et al., defendant. Plff's Ex. 8. Filed Nov. 9, 1906, W. C. Birdwell, Clerk.

642

No. 7004.

Filed Oct. 29, 1907.

A. J. WEST, Respondent,

v.

Captain JOHN R. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, and John Sudden, Appellants.

This action was brought under the statutes of this state in relation to liens against steamers and other vessels. The purpose of the action is to recover damages alleged to have been sustained by the plaintiff on account of a collision between the steamer Norwood and the plaintiff's bridge. The complaint shows that the Norwood is an enrolled vessel, the owners and managing owners of which reside in the state of California, and that the plaintiff is the owner of a com-

643 bination steel and wood drawbridge, together with the approaches belonging to the same, extending across the Chehalis river from Aberdeen to South Aberdeen in Chehalis county. On the 7th day of May, 1906, the bridge was being used by the plaintiff as a toll bridge for the passage of passengers, street cars, and other traffic. It is alleged that the bridge was authorized by the secretary of war of the United States, and that it was a lawful structure in the navigable stream. The bridge was provided with a large swinging span, which was opened by revolving the same upon a central pier constructed in the channel of the river, so that when the bridge was opened it afforded two passageways about one hundred and twenty-five feet in width on each side of the central pier, for the passage of vessels up and down the river.

It is averred that, on the day aforesaid, the defendants were operating the Norwood upon said river, and that while they were engaged in passing the vessel through the draw of said bridge, they negligently ran her against the supporting piers of one of the spans of the bridge, and thereby injured the piers to such an extent that within a few hours thereafter one of the spans fell into the waters of the river and was broken up and almost utterly destroyed. By virtue of the statutes aforesaid the complaint alleges, that plaintiff is entitled to a lien upon the vessel for the damages sustained and, after alleging nonresidence of all the defendants and that the vessel was about to be taken from the state of Washington to some port in the state of California, it was asked that a receiver should be appointed to take charge of the vessel pending the action. The court appointed a temporary receiver to take immediate charge of the vessel, and issued an order that the defendants should show cause why a permanent receiver should not be appointed. Before the time fixed for hearing upon the order to show cause, the defendants applied to the court for discharge of the vessel from the receivership upon their signing a bond to plaintiff in the penal sum of \$30,000, conditioned that they would pay any judgment or claim which the plaintiff might establish in said cause of action. Such bond was given, it being expressly stated therein that one of its conditions is that the personal liability of the principals and surety shall be substituted for any security which the plaintiff may have against the vessel. Thereupon the vessel was discharged from the receivership and turned over to the defendants.

The defendants thereafter demurred to the complaint, on the ground that the court has no jurisdiction of the subject-matter of the action, and also that the complaint does not state facts sufficient to constitute a cause of action. The demurrer was overruled. The defendant Hulbert was dismissed from the action, and the remaining defendants answered jointly, expressly stating that they did so without waiving their demurrer, and still insisting upon their rights as claimed under the demurrer. The answer admits that the
644 Norwood is an enrolled vessel of about seven hundred and fifty tons gross burden, or about five hundred tons net burden; that the defendants Sudden & Christenson, of San Francisco, California, are the managing owners thereof, and that the defendant

Martin is the master of the vessel, but denies any negligence or liability in the premises. The affirmative allegations of the answer are very extensive and need not be enumerated at this time. It was stipulated that the cause should be tried by the court without a jury, and after such trial the court made its findings of facts and conclusions of law and entered judgment that the plaintiff shall recover from the defendants the sum of \$13,751.89, and costs. This appeal is from said judgment.

It is assigned that the court erred in holding that it had jurisdiction. The respondent contends that, for several reasons, appellants have waived this point; (1) for the reason that no exception was taken to the ruling upon the demurrer to the complaint. It is true the record does not show a formal exception entered at the time the order overruling the demurrer was made, but it does show that the demurrer was argued by counsel, and that the court was fully advised, and later, when the answer was presented, it expressly stated in its commencing clause that the appellants answered "without waiving their demurrer herein and still insisting upon their rights as claimed under such demurrer." Furthermore, at the trial, the appellants objected to the introduction of any testimony in support of the complaint, for the reasons stated in the demurrer. This objection was overruled. It is therefore manifest from the record that appellants did not waive their objections to the jurisdiction as raised by the demurrer, and that the court was fully advised thereof before the trial began. Moreover, under our statute, 2 Bal. Code, § 4911, the objection that the court has no jurisdiction may be raised "at any stage of the proceedings either in the superior or supreme court." (2) For the reason that appellants entered their general appearance in the action. The record discloses a notice of general appearance, filed at a time prior to the filing of the demurrer or answer. If the question here involved were that of jurisdiction of the persons of the appellants, this point would be against them; but if, as they contend, the court had no jurisdiction of the subject-matter of the action, then no appearance they could make could confer jurisdiction. 11 Cyc. 673, 674, and cases cited. (3) For the reason that appellants gave a bond for the release of the Norwood from the hands of the receiver, and that the action then proceeded as an ordinary action at law for damages. It is true the bond stated that the obligors would pay any judgment that should be established upon
645 respondent's cause of action mentioned in his complaint. But it was expressly stated that the personal liability was substituted "for any security or claim which the said plaintiff A. J. West may have against or in the said vessel Steamer Norwood, her tackle, apparel, furniture, engines, boilers, etc." It is therefore evident that if the court had not jurisdiction of the subject-matter of the cause of action stated in the complaint, viz., the enforcement of a lien against the vessel, it could not by virtue of the recitals in the bond enter judgment against the bondsmen whose liability was substituted for that of the vessel on condition that it should be found in said cause that the vessel itself was liable.

The objection of respondent to the consideration of the question of

jurisdiction must therefore be denied, and we proceed now to the examination of that subject. It must be said that the determination of the subject is not unattended with difficulty, involving as it does an examination of the federal decisions, somewhat difficult to reconcile and apply to the facts of this case. The action was brought in the state court to enforce a lien alleged to exist by virtue of a state statute, Bal. Code, § 5953, the pertinent part of which is as follows:

"All steamers, vessels, and boats, their tackle, apparel, and furniture, are liable,— * * *

6. For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state.

Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued."

The next section of the statute, Bal. Code, § 5954, deals with the procedure for the enforcement of the liens. The section is as follows:

"Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any district court of this territory."

It will thus be seen that, if the cause of action here is based upon a maritime tort, then even the state statute requires that it shall be enforced in admiralty. We must therefore determine whether this is a maritime tort or a tort not maritime in its nature. The injured prop-

erty was a bridge which was suspended over navigable waters
646 and supported by piers planted in the soil beneath such waters.

The injury was caused by a moving vessel in said waters. There seems to be no doubt under the decisions that, if the injury had been to the vessel and caused by the bridge, it would have constituted a maritime tort, for the reason that the thing so injured would have been clearly maritime in its character and location. The controversy here is whether the injury to the bridge occurred upon navigable waters and so as to make the tort causing it a maritime one, or whether the bridge's connection with the soil and shore rendered it such a land structure as made the injury nonmaritime. The case of *Milwaukee v. The Curtis*, 37 Fed. 705, decided in the year 1889 by the district court of the United States for the eastern district of Wisconsin, involved facts similar to those of this case. A lawfully constructed bridge spanned the navigable waters of the Milwaukee river. It was a swinging bridge, its center resting upon a stone pier constructed upon the bed of the river. The bridge was damaged by a vessel moving in the river. A libel *in rem* was brought in the Federal court to recover damages. The objection was made that the court was without jurisdiction of the subject-matter, and this contention was sustained and the libel dismissed. It was said in that case:

"In cases of tort locality is the test of jurisdiction in the admiralty. The ultimate judicial authority has determined the principle that

the true meaning of the rule of locality is that, although the origin of the wrong is on the water, yet, if the consummation and substance of the injury are on the land, a court of admiralty has not jurisdiction; that the place or locality of the injury is the place or locality of the thing injured, and not of the agent causing the injury."

The court held that the bridge was not upon the water because suspended in space above water, but that it was a mere prolongation over the water of a highway upon land. The primary authority upon which the decision was based appears to have been *The Plymouth*, 3 Wall. 20. In that case a vessel which was lying at a wharf on waters subject to admiralty jurisdiction, took fire and the fire spread to certain storehouses on the wharf, consuming the buildings and their contents. It was held not to be a case for admiralty jurisdiction. The court said:

"It will be observed, that the entire damage complained of by the libellants, as proceeding from the negligence of the master and crew, and for which the owners of the vessel are sought to be charged, occurred, not on the water, but on the land. The origin of the wrong was on the water, but the substance and consummation of the injury on land. It is admitted by all the authorities, 647 that the jurisdiction of the admiralty over marine torts depends upon locality—the high seas, or other navigable waters within admiralty cognizance; and, being so dependent upon locality, the jurisdiction is limited to the sea or navigable waters not extending beyond high-water mark."

It will be observed that, in *The Plymouth*, *supra*, the structures injured were not in or over the waters of the navigable channel, and they were held to be upon the land. In application of the reasoning of the supreme court of the United States in said cause, the Federal trial court, in *City of Milwaukee v. The Curtis*, *supra*, seems to have been led to hold that a bridge should be classified with the warehouses on the wharf, as being upon land. In that case the court also cited in support of its decision *Ex Parte Phenix Ins. Co.* 118 U. S. 610, where it was held that admiralty has no jurisdiction to try the question of damage to buildings on land caused by fire communicated from the smokestack of a vessel. Again, in *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S. 388, the jib boom of a vessel towed by a steam tug in the Chicago river struck a building on land, causing damage to it and the loss of shelled corn stored in it. It was held not to have been a maritime tort of which admiralty had jurisdiction. So far it will be seen that the cases decided by the Federal supreme court have involved injuries to structures wholly upon land or upon a wharf, and have not included bridges over navigable waters. The Federal trial courts have differed in their interpretation of the doctrine of *The Plymouth*, so far as it should be applied to bridges. In the case of *The Arkansas*, 17 Fed. 383, the court reasoned as follows:

"But suppose, on the other hand, the structure, whether bridge, boom, pier, or light-house, be a lawful one; suppose it to be placed in the navigable bed of the river by lawful authority; and sup-

pose some reckless mariner should carelessly run his vessel upon it and injure it; can it be doubted that the tort thus committed would be within the admiralty jurisdiction? Can it be doubted that in such case the owner of the structure might proceed against the owners of the boat *in personam*, or against the boat itself *in rem*? The tort itself would be a marine tort; it would be, as to place, within the admiralty jurisdiction. The owner of the structure would have a right to proceed *in rem* against the boat, because, from its nature, a maritime lien could attach to the boat."

Again, in the case of *The F. & P. M. No. 2*, 33 Fed. 511, 648: the court approvingly refers to *The Arkansas*, *supra*, as having declared the law to be.

"that where a structure lawfully created in the navigable channel of a river is injured by a collision caused by the negligent management of a vessel, the owner of such structure may proceed in an admiralty court, by action *in personam* against the owners of the vessel, or *in rem* against the vessel. If this be the law,—and I have no doubt it is,—no reason is perceived why the owner of a raft of logs which is in course of transit on navigable waters, may not proceed *in rem* against a boat or vessel which negligently runs into and destroys or injures the raft."

This is clearly a case where it is our duty to follow the doctrine of Federal decisions, and so far as the above-cited decisions are concerned, we are without any decision from the final Federal authority involving such a structure as a bridge over navigable waters under similar facts, and we also find the subordinate Federal courts differing as to the application that shall be made of certain decisions to bridges and similar structures.

The appellants urge that a later decision of the supreme court has modified and practically overruled *The Plymouth* and the other decisions. They cite *The Blackheath*, 195 U. S. 361, decided in the year 1904. In that case it was held that admiralty has jurisdiction of a libel *in rem* against a vessel for damages caused by its negligently running into a beacon in a channel, although the beacon is attached to the bottom. So far as we are advised, the above-cited case is the first one in which the Federal supreme court considered the injury caused by a vessel to a thing attached to the soil and within the channel of a navigable highway. The opinion was written by Mr. Justice Holmes, and it reviews the decisions which seem to bear in any way upon the subject-matter, including the pioneer case of *The Plymouth*, which was decided in 1865. More or less weight seems to have been accorded to all of the decisions in consideration of the particular facts in each case, and no case was expressly declared to be overruled. Some expressions in the opinion seem to us to be significant. Citing with approval *The Arkansas*, *supra*, the court said:

"But, as has been suggested, there seems to be no reason why the fact that the injured property was afloat should have more weight in determining the jurisdiction than the fact that the cause of the injury was. * * * And again it seems more arbitrary than ra-

649 tional to treat attachment to the soil as a peremptory bar outweighing the considerations that the injured thing was an instrument of navigation and no part of the shore, but surrounded on every side by water, a mere point projecting from the sea."

Referring to the facts in the case of *The Plymouth*, the opinion says:

"Moreover, the damage was done wholly upon the mainland. It never has been decided that every fixture in the midst of the sea was governed by the same rule. The contrary has been supposed in some American cases," citing *The Arkansas* and *The F. & M. P. No. 2*, supra; also stating that the same "is indicated by the English books cited above." Having thus clearly distinguished *The Plymouth* from the case then before the court, involving as the latter did a structure attached to land in the midst of the sea, the court further said:

"It is unnecessary to determine the relative weight of the different elements of distinction between *The Plymouth* and the case at bar. It is enough to say that we now are dealing with an injury to a government aid to navigation from ancient times subject to the admiralty, a beacon emerging from the water, injured by the motion of the vessel, by a continuous act beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of the sea. In such a case jurisdiction may be taken without transcending the limits of the Constitution or encountering *The Plymouth* or any other authority binding on this court."

Thus, without discussing the recognized "different elements of distinction" between the two cases, the court confines its discussion to one element, viz., that the beacon was a government aid to navigation and subject to admiralty. We believe, however, that views expressed in the opinion—such, for instance, as that it is more arbitrary than rational to treat attachment to the soil, which is only technically land through a connection at the bottom of the sea, as a peremptory bar outweighing other considerations—indicates that, if the injured thing had not been an aid to navigation, but was a mere lawful structure at that place, the injury to it would have been held to have been a maritime one and subject to admiralty. Our interpretation of the opinion in this regard is emphasized by the concurring opinion of Mr. Justice Brown in the same case. We here set forth the concurring opinion:

"I do not dissent from the conclusion of the court, although for forty years the broad language of Mr. Justice Nelson in the case of

650 *The Plymouth*, 3 Wall. 20, has been accepted by the profession and the admiralty courts as establishing the principle that the jurisdiction of the admiralty does not extend to injuries received by any structure affixed to the land, though such injuries were caused by a ship or other floating body. It received the approval of this court in the case of the *Phoenix Insurance Company*, 118 U. S. 610, and in that of the *Chicago & Pacific Elevator Company*, 119 U. S. 388, and has been followed by the courts of

least a dozen different districts, and applied to bridges, piers, docks and every other class of structure permanently affixed to the soil.

I do not think this case can be distinguished from the prior ones, and, in my opinion, it makes no difference in principle whether a beacon be affixed to piles driven into the bottom of the river or a stone projecting from the bottom, or whether it be surrounded by twelve feet or one foot of water, or whether the injury be done by a wharf projecting into a navigable water, or to a beacon standing there, or whether the damage be caused by a negligent fire or by bad steering.

I accept this case as practically overruling the former ones, and as recognizing the principle adopted by the English Admiralty Court Jurisdiction Act of 1861 (sec. 7), extending the jurisdiction of the Admiralty court to 'any claim for damages by any ship.' This has been held in many cases to include a damage done to a structure affixed to the land. The distinction between damage done to fixed and to floating structures is a somewhat artificial one, and, in my view, founded upon no sound principle; and the fact that Congress, under the Constitution, cannot extend our admiralty jurisdiction, affords an argument for a broad interpretation commensurate with the needs of modern commerce. To attempt to draw the line of jurisdiction between different kinds of fixed structures, as, for instance, between beacons and wharves, would lead to great confusion and much further litigation."

The above is an interpretation of the necessary force and scope of the main opinion by a member of the tribunal that rendered the decision and who concurred therein. It is true the main opinion distinguishes the former cases, while the concurring opinion does not; but for reasons heretofore stated we believe the distinguishment of the former cases does not lead to a distinguishment of the facts in the case before us from the facts and argument in the decision in *The Blackheath*. Since the rendering of that decision and in the year 1906, the district court of the United States for the Southern district of New York, in the case of *Bowers Hydraulic Dredging Co. v. Federal Contracting Co.*, 148 Fed. 290, expressed the view that, by the decision in *The Blackheath*, "the admiralty jurisdiction has been broadened very considerably," and that some of the artificial distinctions that have been heretofore observed as ousting the jurisdiction of admiralty cannot be observed in the future. In that case a dredge whose work was performed partly on land and partly on water was held to be within the admiralty jurisdiction, and the court on the strength of *The Blackheath* refused to follow the former decisions that would have led to a different result.

The above Federal judicial interpretations of the scope of the decision in *The Blackheath*, do we believe we should follow. Especially do we believe we should do so until the final Federal authority may have more definitely stated a contrary view. We therefore believe the facts of this case bring the subject-matter within the admiralty jurisdiction. The point of the immediate contact which precipitated

the injury was a pier which it is alleged lawfully stood within the channel of navigable waters. It rested upon soil to be sure, but soil which formed the bottom of the sea and was therefore not land technically speaking. It was as much in the sea as was the beacon in The Blackheath. Its locality with reference to the sea was the same as the beacon, and the mere fact that it was applied to another use we believe cannot be material. Even in The Plymouth it will be remembered the court said that jurisdiction over maritime torts depends upon locality, and that, being so dependent upon locality, the jurisdiction is limited to the sea or navigable waters not extending beyond high water mark. We do not believe it will ever ultimately be held that, for the purposes of jurisdiction, a distinction must be made between a pier which stands in navigable waters and a beacon which stands in the same locality, merely because the pier supports a bridge which spans across the waters to the shore. The pier as the supporting agency, the foundation of the structure, it would seem must draw the structure to its own locality, that of the waters.

In any event, even if it shall be held that we are in error in the foregoing interpretation of the scope of Federal decisions, still there is another element in this case which we think, within the technical distinctions which have been made in the decisions, must bring the case within admiralty jurisdiction. The complaint alleges that the appellants;

"Negligently, carelessly and through failure to exercise ordinary skill in the handling, management and navigation of said vessel, ran said vessel against the supporting piers of one of the spans of plaintiff's said bridge and thereby, through the carelessness and negligence of the defendants' struck, broke and injured the piers supporting the plaintiff's said bridge to such an extent that
652 within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the said Chehalis river and was broken up and almost utterly destroyed."

It is manifest from the foregoing that at least a substantial part of the resulting injury was consummated on the very surface of and in the water itself. If the other facts discussed were not sufficient of themselves to establish a maritime locality for the resulting injury, certainly this additional circumstance must complete the chain of facts necessary to do so. If it be said that the argument upon this point is technical, it must be said in reply that very technical distinctions appear to have necessarily formed a part of the history of the law upon this subject.

The judgment is reversed, and the cause remanded with instructions to dismiss the action.

HADLEY, C. J.

Dunbar, Rudkin, Crow, Mount, and Root, J. J., concur.

Fullerton, J. (dissenting).—I dissent. I think the case falls within the rule of the case of Johnson v. Chicago & Pacific Elevator Co., 119 U. S. 388, and that the tort committed is within the jurisdiction of the state courts.

653

Filed Nov. 14th, 1908.

No. 7004.

A. J. WEST, Respondent,

v.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. SUD-
den, E. A. Christenson, Robert Sudden, John Sudden, and Ed.
Hulbert, Appellants.

On Rehearing.

A rehearing was granted in this cause, and argument was heard at the present term. A statement of the case may be found in the original opinion, 47 Wash. 417, to which we here refer in order to avoid repetition. The only question determined by the former opinion was that of jurisdiction. It was held that the facts brought the case within the jurisdiction of admiralty. In view of certain discriminations which had theretofore been made in the decisions of the Supreme Court of the United States, it was believed that that tribunal would so hold should it be called upon to consider facts identical with those involved herein concerning the locality of the collision and the resulting injury. It now appears, however, that we erred in the entertainment of that view. Since our decision was rendered the Supreme Court of the United States has rendered two decisions directly involving collisions between vessels and bridges which span navigable waters.

Cleveland Terminal & Valley R. Co. v. Cleveland Steamship
Co., 208 U. S. 316;

The Troy, 208 U. S., 321.

In the case first above cited the court followed what was said in *The Plymouth*, 3 Wall. 20, distinguished what was said in *The Blackheath*, 195 U. S. 361, and reached the conclusion that the locality of the collision was not maritime, for the reason that the injured structure was so connected with the shore that it immediately concerned commerce upon the land. The two cases cited were companion cases in their facts, although one was appealed from the northern district of Ohio and the other from the western district of Wisconsin. The decisions were rendered on the same day, and the

654 decision in *The Troy* was based upon the opinion in the first case cited. So far as the question of locality is concerned, those decisions are binding upon this court. In our former opinion we simply endeavored to anticipate what would be the decision of the higher tribunal in such a case, and now that we find we were mistaken, it becomes our duty to reverse our former holding upon this subject, unless a further feature suggested by appellants has the effect to establish the locality of this injury as a maritime one. We refer to the matter mentioned at the close of the former opinion where it was suggested that, inasmuch as the damage

was largely effected by the action of the water after the bridge fell, the locality of the damage was for that reason a maritime one. We were of the view when that opinion was prepared that the Federal Supreme Court was disposed to give much force to the matter of locality in determining the dividing lines between admiralty jurisdiction and that of the state courts, and that very technical distinctions had been observed in order to fix the locality as being either maritime or non-maritime. The later decisions cited above seem, however, to give more force to the character of the structure colliding with the vessel, it being connected with the land or otherwise, as the determining factor, than to the mere matter of locality which was so much discussed in the earlier decisions. We therefore believe there are no facts in this case to distinguish it from the later decisions cited so far as the matter of locality is concerned, and that upon that question the admiralty court has not jurisdiction.

The appellants further contend that the state court has no jurisdiction, for the reason that the statute invoked by respondent and cited in the former opinion is not applicable to the facts of the case at bar, and if so, that the statute is unconstitutional. It having been determined that admiralty has not jurisdiction, then it must follow that the subject is open for state legislation, and is within the jurisdiction of the state courts. The statute, § 5953, Bal. Code, provides for liens upon "all steamers, vessels, and boats, their tackle, apparel and furniture." It is evidently intended to reach foreign as well as domestic vessels, and the property injured by the vessel need not

655 necessarily be transportable, as argued by appellants. The statute is broad enough to include damage to a permanent structure like a bridge. To give it any other construction would be extremely technical and we do not think the legislature intended that a restricted or narrow meaning should be given the statute. The statute expressly provides that demands for injuries by the vessel shall constitute liens upon the vessel. Such liens created by state statutes are enforceable in the state courts when the subject matter is not within the jurisdiction of admiralty.

"The rule to be deduced from these cases, so far as they are pertinent to the one under consideration, is this, that wherever any lien is given by a state statute for a cause of action cognizable in admiralty either *in rem* or *in personam*, proceedings *in rem* to support such lien are within the exclusive jurisdiction of the admiralty courts. But the converse of this proposition is equally true, that if a lien upon a vessel be created for a claim over which a court of admiralty has no jurisdiction in any form, such lien may be enforced in the courts of the state."

Knapp, Stout & Co. v. McCaffrey, 177 U. S. 638.

The state court therefore has jurisdiction in the case at bar to enforce a lien for the damage done.

A temporary receiver was appointed by the court, and the vessel was taken in charge by him at the beginning of this action. As suggested by respondent, this was in effect an equitable attachment

of the property. The appellants entered an appearance, and executed a bond for the release of the property, which bond was to the effect that appellants will pay to respondent any sum or claim which may be established in this case upon the cause of action mentioned in the complaint. The bond was like that given in the case of *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S. 388. The court there said:

"So far, therefore, as this suit is concerned, the action in the shape in which it comes before this court, is a suit *in personam* with an attachment as security, the attachment being based on a lien given by the state statute, and a bond having been by the act of the defendant substituted for the thing attached."

The situation is analogous to that of an attachment at law where a bond for the release of the attached property has been given, conditioned for the payment of the judgment which shall be obtained in the cause. The security of the bond becomes substituted for that of the released property, and any question as to the regularity of the attachment cannot afterwards be raised.

656 *Brady v. Onffroy*, 37 Wash. 482.

We hold that the statute is valid, and that the court had in all respects jurisdiction to enter the judgment.

It is urged by appellants that sufficient authority from the War Department of the United States to maintain the bridge was not shown. We are satisfied with the showing upon that subject, and believe that no error was made by the trial court in so finding.

Appellants object to the rule for measuring damages adopted by the court. They contend for the difference between the market values of the bridge before and after the injury as the true measure. Such a rule under the circumstances would be fraught with much uncertainty. The property was peculiar and local in its nature, and the market value was necessarily regulated by the amount of demand for its use by the public at that particular place, having reference to the population of the city at that time and to the probable increase thereof within reasonable limitations. An attempt to establish such a value it must be seen would have been attended with much uncertainty. Again, the damage was to a portion of the bridge only, which compelled the making of repairs before any part of it could be used. It was not an article that respondent could procure in the market. In such case, we think the true measure is the actual cost of repairing.

Jackson etc. Works v. Hurlbut, (N. Y.) 70 Am. St. 432.

It is also urged that recovery of a reasonable sum as the net profits from the bridge during the time it could not be used, should have been denied. We think there was no error in this regard.

"Where the natural and direct result of a tort is the interruption of or an injury to an established business, there may be a recovery of profits lost during the period of enforced suspension or by reason of the tortious act."

8 Am. & Eng. Enc. Law. (2d ed.) 625.

See also *Sutherland on Damages*, (3d ed.) § 70.

We believe that the findings of the court are substantially supported by the testimony, and that they should not be disturbed. The judgment is affirmed.

HADLEY, C. J.

We concur:

RUDKIN, J.

MOUNT, J.

CROW, J.

DUNBAR, J.

Fullerton, J., did not sit.

657 In the Supreme Court of the State of Washington.

WEDNESDAY, January 6, 1909.

No. 7004.

A. J. WEST, Respondent,

vs.

JOHN I. MARTIN et al., Appellants.

Judgment.

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Chehalis County and upon the argument of counsel, and the Court having fully considered the same, and being fully advised in the premises, it is now on this 6th day of January A. D. 1909, on motion of J. C. Hogan Esquire, of counsel for respondent, considered, adjudged and decreed that the judgment of the said Superior Court be, and the same is hereby affirmed with costs; the petition for rehearing denied and that the said A. J. West have and recover of and from the said John I. Martin et al., and from the Metropolitan Surety Co. Surety the sum of Thirteen Thousand Nine Hundred & Seventy-four & 59/100 Dollars with interest thereon at 6 per cent per annum from March 26th, 1907, until paid together with the costs of this action taxed and allowed at One Hundred & Fifty-One & 00/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

658 In the Supreme Court of the State of Washington.

A. J. WEST, Respondent,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, Appellants.

Petition for Writ of Error.

To the Honorable Frank H. Rudkin, Chief Justice of the Supreme Court of the State of Washington:

The petition of John L. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, respectfully shows:

That heretofore, to-wit: upon the 26th day of March, 1907, there was tried in the Superior Court of the State of Washington, in and for the County of Chehalis, a case in which A. J. West was plaintiff, and your petitioners were defendants.

The complaint of the plaintiff in said case was to enforce and foreclose an alleged lien upon the Steamer "Norwood," her boilers, engines, tackle, apparel and furniture, for alleged damages caused by the said Steamer "Norwood" colliding against the bridge of the plaintiff, which damages were laid in the sum of Fifteen Thousand Dollars (\$15,000); it being also alleged that your petitioners are the owners of said Steamer "Norwood"; the plaintiff claiming a lien under the Statutes and Laws of the State of Washington upon the said Steamer "Norwood," her boilers, engines, tackle, apparel and furniture for the said damages done to the said bridge of plaintiff.

Thereafter your petitioner appeared in said cause and demurred to the said Complaint of the plaintiff upon the following grounds, to-wit:

1st. That the court has no jurisdiction over the subject matter of the action.

2nd. That the complaint does not state facts sufficient to constitute a cause of action.

Your petitioners show that each of said grounds of demurrer raised and presented a Federal question, namely:

659 First. Whether the fact alleged in the complaint, that the substance and consummation of the injury and wrong took place upon the waters of the Chehalis River, showed that it was a maritime tort within the exclusive jurisdiction of the Courts of Admiralty.

Second. Whether the Statutes and Laws of the State of Washington, namely, Sections 5953 and 5954 of Ballinger's Code, by their terms gave a lien upon the said Steamer for the wrong and injury complained of, and if so, does said Statute conflict with the Constitution and Laws of the United States.

And your petitioners alleged and contended by said demurrer in said case that the said Superior Court of the State of Washington,

in and for Chehalis County, did not have jurisdiction of the subject matter of the said suit, and that the same was within the exclusive jurisdiction of the Court of Admiralty; that the Statutes and Laws of the State of Washington, namely: Sections 5953 and 5954 of Ballinger's Code, did not contemplate a lien in this kind of a case, and did not by the terms thereof give any lien upon the said Steamer for the alleged injury to said bridge; or, if it should be held by said Court that said Laws and Statutes by their terms contemplated and gave a lien in this character of a case, then that the said Laws and Statutes were repugnant to and in violation of the Constitution and Laws of the United States, namely, Article XIV of the Amendments to the Constitution of the United States, Section 2 of Article III of the Constitution of the United States, and sub-division 8 of Section 563 of the Revised Statutes of the United States.

Your petitioners further show that the said Superior Court of the State of Washington, in and for Chehalis County, overruled and denied the said demurrer, deciding and holding that it had jurisdiction of the subject matter of said suit, and that under the allegations of the complaint, the plaintiff had a lien upon the said Steamer for the amount of his damages by reason of the injury to said bridge, under and by virtue of the provisions of Sections 5953 and 5954 of said Ballinger's Code, and that said Statutes were not repugnant to and in violation of the Constitution and Laws of the United States.

Your petitioners further show that without waiving their 660 demurrer, but still insisting upon their rights thereunder, and after the said court had overruled and denied the same, they filed their answer to said complaint of the plaintiff, wherein, among other things, it is denied that the said bridge was affirmatively authorized by the Honorable Secretary of War of the United States, or that the same constituted or was a lawful structure. And as affirmative defenses, among other things, it is alleged that the petitioners are residents and citizens of the City of San Francisco and State of California; that at the times mention- in the complaint the Steamer "Norwood" was and is an ocean going vessel registered at San Francisco, in the State of California under the navigation laws of the United States, and employed by her owners upon the Pacific Coast between the City of San Francisco and points in the State of Washington, and particularly on Grays Harbor, as a common carrier for hire; that the Chehalis River has been and now is a public navigable stream, flowing into Grays Harbor and thence into the Pacific Ocean upon which commerce is carried on in steam and sailing vessels to and from points on said river in the State of Washington to and from points in other States and foreign countries, and is a navigable river for all commercial purposes, and in which for a number of miles inland the tide ebbs and flows; that Grays Harbor is an arm of the sea, viz: the Pacific Ocean, in which the tide ebbs and flows, and which is navigable for all commercial purposes the full length of the harbor; that at or near the point of confluence of the said river with the said Grays Harbor, the bridge of the plaintiff was constructed, being about 1700 feet in length and extending across the waters of said river and harbor, and had a swinging draw

span about 250 feet in length, by means of which the navigation of said river and harbor along the line of and through the said bridge is possible, but not otherwise.

It is further set forth and alleged in said affirmative defenses, that by reason of the matters and things therein alleged, the said Superior Court has not jurisdiction, and ought not to enforce the claim alleged in plaintiff's complaint against the said Steamer "Norwood,"

or against these petitioners, for the following reasons, to-wit:

661 1. Because the right of action in this case is based upon the provisions of Secs. 5953 and 5954 of Ballinger's Code and Statutes of Washington and particularly Subdivision 6 of Sec. 5953; that the right thereby created and sought to be enforced in this action by the plaintiff herein, is in violation of the 8th Section of Article I of the Constitution of the United States, which provides, among other things, as follows, to-wit:

"Congress shall have power: To regulate commerce with foreign nations and among the several States."

2. Because the enforcement of Sections 5953 and 5954 of Ballinger's Code and Statutes of Washington as sought by the plaintiff in this action would be to deprive the owners of the Steamer "Norwood" of their property without due process of law and without the equal protection of the law as provided by Article XIV of the Amendments to the Constitution of the United States, which is as follows, to-wit:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the laws."

3. Because the enforcement in this case of plaintiff's alleged cause of action based upon said Sections 5953 and 5954 of Ballinger's Code and Statutes of Washington would be in violation of defendants' rights as expressed in Section 2 of Article III of the Constitution of the United States, as follows, to-wit:

"The judicial power shall extend to all cases of admiralty and maritime jurisdiction."

And subdivision 8 of Section 563 of the Revised Statutes of the United States, which provides that:

"The District Court shall have jurisdiction as follows: Of all civil causes of admiralty and maritime jurisdiction."

The plaintiff by his reply took issue upon the allegations of the answer that the court did not have jurisdiction, and that Sections 5953 and 5954 of Ballinger's Code was repugnant to and in violation of the Constitution and Statutes of the United States, but did not deny that the said Steamer "Norwood" is an ocean going vessel registered at San Francisco in the State of California under the

662 navigation laws of the United States, and is employed by her owners upon the Pacific Coast between the City of San Francisco and points in the State of Washington and particularly on Grays Harbor, as a common carrier for hire, and that the Chehalis River is a public navigable stream flowing into Grays Harbor upon

which commerce is carried in steam and sailing vessels to and from points on said river in the State of Washington to and from other States and foreign countries, and is a navigable stream for all commercial purposes, in which the tide ebbs and flows, and that Grays Harbor is an arm of the sea, or Pacific Ocean, in which the tides ebb and flow, and is navigable for all commercial purposes the full length of the harbor; and that at or near the confluence of the said river with Grays Harbor the bridge of the plaintiff was constructed; that it was about 1700 feet in length and extends across the waters of said river and harbor, and has a swinging draw span about 250 feet in length by which navigation of said river and harbor is made possible, but not otherwise.

And your petitioners at the trial of said cause contended that said Court did not have jurisdiction, as alleged and set forth in said answer and said Court decided against your petitioners on their said contention and held that it had jurisdiction of the subject matter of said suit, and rendered judgment against them for the sum of \$13,751.89 and costs. That thereupon your petitioners duly excepted to the decision and findings of said Court, and, thereafter, duly appealed to the Supreme Court of the State of Washington, and assigned, among others, the following errors:

1st. Error in overruling petitioners' demurrer to the complaint:

(a) On the question of jurisdiction; and:

(b) On the question of lien.

2nd. Error in finding that the bridge in question had been erected, maintained and operated under the authority of the Honorable Secretary of War of the United States.

At the October Term, 1908, of the Supreme Court of the State of Washington, the said cause came on to be heard, and was argued in the said Supreme Court, and on the — day of January, 1909, the said Supreme Court of the State of Washington rendered its
663 final judgment affirming the judgment of the court below, viz: the Superior Court of the State of Washington, in and for the County of Chehalis.

Your petitioners further show that said judgment of said Supreme Court was and is a final judgment in the highest Court of the State of Washington in which a decision in said suit could or can be had.

Your petitioners further show that a Federal question was made in said case, to-wit, as hereinbefore set out, and that said judgment of said Supreme Court was repugnant to and in conflict with the Constitution and Laws of the United States, and that a decision of said Federal question was necessary to the judgment rendered.

And your petitioners claims the right to remove said judgment to the Supreme Court of the United States by Writ of Error under Section 709 of the Revised Statutes of the United States, on the grounds and for the reasons aforesaid, as appears by the record in said cause, which is herewith submitted.

Wherefore, Your petitioners pray the allowance of a Writ of Error, returnable into the Supreme Court of the United States, and for citation and supersedeas, that the errors complained of may be reviewed in the Supreme Court of the United States, and the judg-

ment aforesaid of the said Supreme Court of the State of Washington be reversed.

TRUMBULL & TRUMBULL,
Attorneys for Petitioners.

Let the Writ of Error issued as prayed.
Dated January 28, A. D. 1909.

FRANK H. RUDKIN,
Chief Justice.

Endorsed: No. 7004. A. J. West, Respondent, vs. John I. Martin et al., Appellants. Petition for Writ of Error. Filed Jan. 28, 1909. C. S. Reinhart, Clerk.

664 In the Supreme Court of the State of Washington.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, Plaintiffs in Error,

vs.

A. J. WEST, Defendant in Error.

Assignment of Errors.

Comes now the above named Plaintiffs in error, and respectfully submit that in the record, proceedings, decision, and final judgment of the Supreme Court of the State of Washington, in the above entitled matter, there is manifest error in this, to-wit:

I.

The Supreme Court of the State of Washington erred in holding that the Superior Court of the State of Washington in and for Chehalis County, had jurisdiction of the subject matter of this action, and that said Superior Court did not err in overruling and denying the demurrer of plaintiffs in error to the complaint of defendants in error, and in holding that the Courts of Admiralty of the United States had not exclusive jurisdiction of the cause of action alleged, and that such assumption of jurisdiction by said Superior Court was not in conflict with Section 2 of Article III of the Constitution of the United States, to-wit:

"The judicial power shall extend to all cases of Admiralty and maritime jurisdiction."

and subdivision 8 of Section 563 of the Revised Statutes of the United States, to-wit:

"The District Court shall have jurisdiction as follows: of all civil causes of admiralty and maritime jurisdiction."

In this, to-wit:

1st. In holding and deciding that the allegations of paragraph three of the complaint of the defendant in error, (plaintiff and re-

spondent below), that the collision between the Steamer "Norwood" and the bridge of the defendant in error "broke and injured the piers supporting the plaintiff's said bridge to such an extent
665 that within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the said Chehalis River, and was broken up and almost utterly lost," did not show that the cause of action was one within the exclusive jurisdiction of the Courts of Admiralty of the United States, and that the State Courts did not have jurisdiction.

2nd. In holding that the character of the structure colliding with the vessel, as to its being connected with the land or otherwise, was the sole determining factor as to jurisdiction, without regard to the locality of the substance and consummation of the wrong complained of.

II.

The Supreme Court of the State of Washington erred in holding that the statute invoked by defendant in error, namely, Sections 5953 and 5954 of Ballinger's Code and Statutes of Washington, is applicable to the facts in this case, in this to-wit:

1st. That said statute was not intended to and does not include in its terms injuries to a fixed structure like a bridge.

2nd. That said statute was not intended to and does not give a lien on foreign vessels engaged in interstate commerce.

III.

That the interpretation and construction placed upon said statute 5953 and 5954 of Ballinger's Code and Statutes of Washington, by the Supreme Court of the State of Washington, in holding and deciding that said statute of the State of Washington gave a lien upon a foreign vessel engaged in interstate commerce for injuries to a permanent structure like a bridge, which may be enforced in the State Courts, is an interference with foreign and interstate commerce, and is repugnant to and in conflict with the Constitution and Laws of the United States, and especially with Section 8 of Article I of the Constitution of the United States, which provides, among other things, as follows:

"Congress shall have power: To regulate commerce with foreign nations and among the several States."

IV.

That the interpretation and construction placed upon said statute 5953 and 5954 of Ballinger's Code and Statutes of Washing-
666 ton, by the Supreme Court of the State of Washington in holding and deciding that said statute of the State of Washington gave a lien upon a foreign vessel engaged in interstate commerce for injuries to a fixed and permanent structure like a bridge, would be to deprive the owners of the Steamer "Norwood" of their property without due process of law, and without the equal protection of the law, and is repugnant to and in conflict with the Constitution and Laws of the United States, and especially with Section 1 of Arti-

Article XIV of the Amendments to the Constitution of the United States, which declares that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

V.

The Supreme Court of the State of Washington erred in affirming the judgment and decision of the said Superior Court of the State of Washington in and for Chehalis County, in denying the motion of the plaintiffs in error, at the conclusion of the trial, for a judgment upon the evidence offered and submitted, for the reason that it appeared from said evidence and the admissions of the pleadings that the substance and consummation of the wrong and injury complained of was in and upon the waters of the Chehalis River, a public navigable stream upon which commerce is carried in steam and sailing vessels to and from points on said river in the State of Washington, to other states and foreign countries, and that it appeared that it was not a case within the jurisdiction of the said court, but wholly within the jurisdiction of the Courts of Admiralty of the United States.

VI.

The said Supreme Court of the State of Washington erred in its judgment in holding that there was not error in the finding of the court below that the said bridge alleged to have been injured was affirmatively authorized by the Honorable Secretary of War of the United States, and that the same constituted and was a lawful structure across the said Chehalis River, for the reason that the evidence failed to show any authority from the Honorable Secretary of War of the United States, or from the United States, to the defendant in error, to construct, operate or maintain said bridge, but on the contrary, showed that the said bridge was an obstruction and hindrance to the free navigation of said river, and a nuisance.

Plaintiff in error says that in the aforesaid suit there was drawn in question the aforesaid provisions of the Constitution of the United States and of the Acts of Congress, and the jurisdiction and right of the said Superior Court of the State of Washington in and for Chehalis County, to entertain, hear and determine the said cause under the laws of the United States, and that said decision of the Supreme Court of the State of Washington was in favor of the jurisdiction and power of the said Superior Court, and adverse to the Constitution and Statutes of the United States aforesaid.

Wherefore, the said plaintiffs in error pray that the judgment and decision aforesaid may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by the action and because of the said judgment and decision.

TRUMBULL AND TRUMBULL,

Attorneys and Counsel for Plaintiffs in Error.

Endorsed: No. 7004. Capt. John I. Martin, et al., Plaintiffs in Error, vs. A. J. West, Defendant in Error. Assignment of Errors. Filed Jan. 28, 1909. C. S. Reinhart, Clerk.

668 In the Supreme Court of the State of Washington.

CAPTAIN JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, Plaintiffs in Error,

vs.

A. J. WEST, Defendant in Error.

Know all men by these presents, That we, Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, as Principals, and United Surety Company, as Surety, are held and firmly bound unto A. J. West, Defendant in Error, in the sum of Thirty Thousand Dollars (30,000), to be paid to the said obligee, his successors, representatives, and assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of January, A. D. 1909.

Whereas, the above-named Plaintiffs in error have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the Supreme Court of the State of Washington;

Now, therefore, The condition of this obligation is such that if the above-named Plaintiffs in error shall prosecute their said writ of error to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

669

JOHN I. MARTIN,
SUDDEN & CHRISTENSON,
CHARLES E. SUDDEN,
E. A. CHRISTENSON,
ROBERT SUDDEN, AND
JOHN H. SUDDEN,

By JOHN TRUMBULL,
Their Attorney, Principals.
UNITED SURETY COMPANY,
By UNITED SURETY COMPANY,
By SAMUEL L. RUSSELL,
Resident Vice-President.

Attest:

C. H. FARRELL,
Resident Assistant Secretary.

[Seal of United Surety Company.]

Signed, Sealed and Delivered in the Presence of:
JNO. TRUMBULL.

STATE OF WASHINGTON,
County of King, ss:

On this 29th day of January, 1909, personally appeared before me, John Trumbull, who, being duly sworn, deposes and says: That he is a member of the firm of Trumbull & Trumbull and one of the attorneys for the Plaintiffs in Error above named; That he, as such attorney, is authorized by the said Plaintiffs in Error to sign their names to the foregoing Bond for them and in their behalf; and that he, as such attorney, did execute such bond freely and voluntarily by signing the names of Plaintiffs in Error, as Principals therein; That all of said Plaintiff- in Error are non-residents of the State of Washington and reside in the City of San Francisco, State of California.

JNO. TRUMBULL.

Subscribed and sworn to before me this 29th day of January, 1909.

[NOTARIAL SEAL.]

H. BALLINGER,
Notary Public in and for the State of
Washington, Residing at Seattle.

670 STATE OF WASHINGTON,
County of King, ss:

On this 29th day of January, A. D. 1909, personally appeared before me Samuel L. Russell, who, being duly sworn, deposes and says: That he is the resident Vice President of the United Surety Company of Baltimore; that the seal affixed to the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that the said Samuel L. Russell acknowledged the said instrument to be the free act and deed of said corporation by authority of its Board of Directors, and the said Samuel L. Russell acknowledged the said instrument to be the free act and deed of said corporation.

SAMUEL L. RUSSELL.

Subscribed and sworn to before me this 29th day of January, 1909.

[NOTARIAL SEAL.]

JNO. TRUMBULL,
Notary Public in and for the State of
Washington, Residing at Seattle.

I hereby approve the foregoing bond and sureties, this 30th day of January, 1909.

FRANK H. RUDKIN,
Chief Justice of Supreme Court
of the State of Washington.

Endorsed: No. 7004. John I. Martin et al., plaintiff- in Error, vs. A. J. West, Defendant in error. Supersedeas Bond. Filed Feb. 1, 1909, C. S. Reinhart, Clerk.

671 In the Supreme Court of the State of Washington.

A. J. WEST, Respondent,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, Appellants.

Order Granting Writ of Error.

Now on this 28th day of January, A. D. 1909, on hearing read the petition of Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, the defendants and appellants in the above entitled action, praying for the allowance of a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Washington, and it appearing by said petition and by the record in the above entitled case that said case is a proper case for the allowance of said Writ, now therefore, it is

Ordered by the undersigned, the Chief Justice of the Supreme Court of the State of Washington, that said Writ be allowed, and the same is hereby allowed accordingly, and the said Petitioners, being the Appellants above named, are ordered to execute to A. J. West, the above named *Appellant*, a bond with sufficient sureties thereon, to be approved by the undersigned, in the sum of Thirty-thousand (30,000) dollars *Dollars*, and said bond when so executed and approved by the undersigned shall operate as a supersedeas bond in said action, and thereupon all further proceedings upon the judgment rendered by this court in said action shall be stayed pending the hearing and determination of said Writ of Error by the United States Supreme Court.

Dated January 28, 1909.

FRANK H. RUDKIN,

*Chief Justice of the Supreme Court
of the State of Washington.*

Endorsed: No. 7004. A. J. West, Respondent vs. John I. Martin et al., appellants. Order granting Writ of Error. Filed Jan. 28, 1909, C. S. Reinhart, Clerk.

672 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of judgment, of a plea which is in the said Supreme Court of the State of Washington before you, or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between A. J. West, Plaintiff and Respondent in said Court,

and Defendants in error in this Court, and Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, Defendants and Appellants in said Court, and plaintiffs in error in this Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of said Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 31st day of March, A. D. 1909, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this first day of February in the year of our Lord one thousand nine hundred and nine.

[Seal of the United States Circuit Court, Western District of Washington.]

A. REEVES AYRES,
*Clerk of the Circuit Court of the United States
 for the Western District of Washington,*
 By SAM'L D. BRIDGES, *Deputy.*

Allowed by

FRANK H. RUDKIN,
*Chief Justice of the Supreme Court
 of the State of Washington.*

[Endorsed:] No. 7004. Dept. No. —. In the Supreme Court of the United States. J. I. Martin et al., Plaintiffs in Error, vs. A. J. West, Defendants in Error. Writ of Error. Filed Feb. 2, 1909. C. S. Reinhart, Clerk. Trumbull & Trumbull, Attorneys for Plaintiffs in Error, 708 American Bank Building, Seattle, Wash.

675 *Service on Defendant in Person.*

STATE OF WASHINGTON,
County of Chehalis, ss:

I, Ed Payette, Sheriff of Chehalis County, do hereby certify that I received the annexed citation on the 25th day of February, 1909, and personally served the same on the 26th day of February, 1909, on A. J. West he being the person cited in said citation by delivering to and leaving with him personally, in said Chehalis County, a certified copy of said citation.

Dated this 27th day of February 1909.

ED. PAYETTE, *Sheriff*,
By ———, *Deputy*.

Sheriff's Fees.

Service	\$.60
Mileage, 24	\$2.40
Total	\$3.00

676 UNITED STATES OF AMERICA, ss:

To A. J. West, Greeting:

You are cited and admonished to appear at the Supreme Court of the United States, at Washington, on the 31st day of March, A. D. 1909, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Washington, wherein Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden are the Plaintiffs in Error, and you are the defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiffs in Error, as in the said Writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of January, A. D. 1909.

FRANK H. RUDKIN,
*Chief Justice of the Supreme Court
of the State of Washington.*

677 [Endorsed:] No. 7004. Dept. No. —. In the Supreme Court of the State of Washington. John I. Martin et al., Plaintiff- in Error, vs. A. J. West, Defendant in Error. Citation. Filed Mar. 2, 1909. C. S. Reinhart, Clerk. Trumbull & Trumbull, Attorneys for Plaintiff- in Error, 708 American Bank Building, Seattle, Wash. Received Feb. 25, 1909, Sheriff's Office, Chehalis Co., Wash.

678 In the Supreme Court of the State of Washington.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSEN, E. A. CHRISTENSEN, ROBERT SUDDEN, and JOHN H. SUDDEN, Plaintiffs in Error,

vs.

A. J. WEST, Defendant in Error.

Order Enlarging the Time in which to Prepare Record and Return the Writ of Error to the Supreme Court of the United States.

Now, on this 26th day of March, 1909, on the Motion of Mr. John Trumbull, of counsel for the Plaintiffs in Error, and it appearing to the undersigned Chief Justice of the Supreme Court of the State of Washington, that it is a proper case to enlarge the time in which to prepare the Record and return the Writ of Error, heretofore issued to the Supreme Court of the United States;

It is, therefore, Ordered that the time in which to prepare the Record and return the Writ of Error to the Supreme Court of the United States be enlarged and extended from the 31st day of March, 1909, up to and including the 15th day of April, 1909.

Enter

FRANK H. RUDKIN,
*Chief Justice of the Supreme Court
of the State of Washington.*

679 [Endorsed:] 7004. Filed Mar. 26, 1909. C. S. Reinhart,
Clerk.

680 In the Supreme Court of the State of Washington.

FRIDAY, March 26, 1909.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSEN, E. A. CHRISTENSEN, ROBERT SUDDEN, and JOHN H. SUDDEN, Plaintiffs in Error,

vs.

A. J. WEST, Defendant in Error.

Order Enlarging the Time in which to Prepare Record and Return the Writ of Error to the Supreme Court of the United States.

Now, on this 26th day of March, 1909, on the motion of Mr. John Trumbull, of counsel for the plaintiffs in error, and it appearing to the undersigned Chief Justice of the Supreme Court of the State of Washington, that it is a proper case to enlarge the time in which to prepare the record and return the Writ of Error heretofore issued to the Supreme Court of the United States,

It is therefore Ordered that the time in which to prepare the record and return the Writ of Error to the Supreme Court of the United

States be enlarged and extended from the 31st day of March, 1909 up to and including the 15th day of April, 1909.

FRANK H. RUDKIN,
*Chief Justice of the Supreme Court
of the State of Washington.*

681 In the Supreme Court of the State of Washington.

Captain JOHN I. MARTIN, et al., Plaintiffs in Error,

v.

A. J. WEST, Defendant in Error.

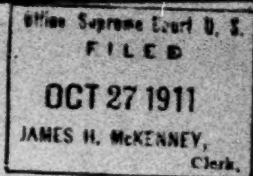
I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a true and correct transcript of so much of the record and proceeding in the above entitled cause as I have been directed to prepare plaintiff- in error, and that in pursuance of the Writ of Error heretofore filed in this court I now transmit the said transcript, together with the original writ of error and the original citation, to the Supreme Court of the United States.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Supreme Court this 2d day of April, 1909.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

Endorsed on cover: File No. 21,601. Washington Supreme Court. Term No. 194. Captain John I. Martin, Sudden & Christensen, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, plaintiffs in error, vs. A. J. West. Filed April 15, 1909. File No. 21,601.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 33.

JOHN I. MARTIN ET AL., PLAINTIFFS IN ERROR,

vs.

A. J. WEST, DEFENDANT IN ERROR.

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.**

BRIEF FOR PLAINTIFFS IN ERROR.

**JOHN TRUMBULL,
ALDIS B. BROWNE,
ALEX. BRITTON,
EVANS BROWNE,**
Attorneys for Plaintiffs in Error.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 33.

JOHN I. MARTIN ET AL., PLAINTIFFS IN ERROR,

vs.

A. J. WEST, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.

Statement of the Case.

This is a suit in equity brought by the defendant in error in the Superior Court of the State of Washington in and for Chehalis County to enforce a lien against the steamer "Norwood" for damages caused by alleged injuries to a bridge. The facts are substantially as follows:

On the 7th of May, 1906, the defendant in error was the owner of a drawbridge across the Chehalis river from the city of Aberdeen, in Chehalis county. At the same time the plaintiffs in error—residents and citizens of the city of San Francisco, State of California—were the owners of the steamer "Norwood," which was engaged in interstate com-

merce between cities in the States of Washington and California.

On the 7th of May, 1906, while the said steamer was attempting to pass through the draw of the bridge, she collided with one of the piers of the bridge, and soon thereafter one of the spans of the bridge fell into the river and was destroyed.

Upon this state of facts and on the 9th day of May, 1906, the defendant in error commenced this suit in equity, and, after setting forth in his complaint the facts relative to the ownership of the bridge and steamer and the details of the collision of the steamer with the bridge, and alleging that through the carelessness and negligence of the defendants the piers supporting the plaintiff's bridge were broken and injured to such an extent "that within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the Chehalis river and was broken up and almost utterly destroyed," and that by reason of the injury to the bridge the plaintiff was damaged in the sum of fifteen thousand dollars (\$15,000.00), claimed a lien under the statutes of the State of Washington upon the vessel, tackle, etc., for the amount of said damages.

It was also alleged that the defendants were non-residents of the State of Washington, and that the vessel was at the time of suit engaged in loading a cargo of lumber at the city of Aberdeen preparatory to departing with the same for some port in the State of California; that the defendants were preparing to take the vessel out of the jurisdiction of the court, and that she would be ready to leave within twenty-four hours, and would do so unless restrained by the order of the court, and that a proper case existed for the appointment of a receiver of said vessel, her engines, etc., and the issuance of a restraining order without notice.

The bill also prayed for the appointment of a temporary receiver, and that a temporary injunction should issue; that upon the final hearing of the case the plaintiff be adjudged

to have a lien upon the vessel for the amount of the damages and the cost of the action, and that the vessel, her engines, etc., be sold under the order and decree of the court; that the proceeds arising from the sale be applied to the satisfaction of plaintiff's said lien, the defendants adjudged personally liable to the plaintiff, and that the plaintiff have judgment against them for the amount of any deficiency remaining after said sale (R., 1-4).

Upon the filing of said complaint on the 9th day of May, 1906, and upon the *ex parte* application of the plaintiff, the court made an order appointing a temporary receiver to take immediate possession of the steamer, to hold and safely keep her within the jurisdiction of the court and subject to the order of the court (R., 5).

And immediately thereafter the said receiver seized and took possession of said vessel.

On the 10th day of May, 1906, the plaintiff in error executed a bond or undertaking for the release of said vessel, which bond was approved by the court (R., 10). On the same day the court made an order discharging the receiver (R., 8).

Thereafter the plaintiffs in error demurred to the complaint on the grounds:

1. That the court had no jurisdiction over the subject-matter of the action.
2. That the complaint did not state facts sufficient to constitute a cause of action (R., 14).

The demurrer was overruled (R., 15).

Thereafter the plaintiffs in error filed their answer to the complaint (wherein they admit and deny the various allegations thereof), and as an affirmative defense alleged that they (the plaintiffs in error) were residents and citizens of the city of San Francisco, in the State of California; that the steamer "Norwood" was an ocean-going vessel registered at San Francisco, in the State of California, under the navigation laws of the United States; that the name "Norwood"

was painted on her bow and stern, and that she was employed by her owners upon the Pacific coast between the city of San Francisco, in the State of California, and ports in the State of Washington, as a common carrier for hire; that the Chehalis river is a navigable stream flowing into Grays harbor, and thence into the Pacific Ocean, upon which commerce is carried in steam and sailing vessels to and from other States and foreign countries, and is a navigable stream for all commercial purposes, in which, for a number of miles inland, the tides ebb and flow; that Grays harbor is an arm of the sea, or of the Pacific Ocean, in which the tides ebb and flow and is navigable for all commercial purposes the full length of the harbor and for a distance of about eighteen (18) miles from the Pacific Ocean inland; that the city of Aberdeen, in Chehalis county, Washington, is situated on the northerly shore of the said river and harbor, and South Aberdeen is situated on the southerly shore, and that at or near the point of confluence the bridge claimed by the defendant in error was constructed, being about seventeen hundred (1,700) feet in length, and extending across the waters of the river and harbor, and connecting the said southerly banks of the said waters in South Aberdeen with the northerly banks in Aberdeen proper.

It was further alleged in said answer that the court had no jurisdiction, and ought not to proceed to enforce the claim alleged in the complaint herein against the steamer "Norwood" or against the defendants for the following reasons:

1. Because the right of action was based upon the provisions of sections 5953 and 5954 of Ballinger's Code and Statutes of Washington, and particularly subdivision 6 of said section 5953, and that the right thereby created and sought to be enforced in this action was in violation of the 8th section of article 1 of the Constitution of the United States, which provides, among other things, as follows, to wit:

"Congress shall have power to regulate commerce with foreign nations and among the several States. * * *"

2. Because the enforcements of sections 5953 and 5954 of Ballinger's Code and Statutes of Washington, as sought by the plaintiff in this action, would be to deprive the owners of the steamer "Norwood" of their property without due process of law and without that due protection of the law as provided by section 1 of article 14 of the amendments to the Constitution of the United States, which is as follows:

"No State shall make or enforce any law which shall abolish the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. Because the enforcement in this case of plaintiff's alleged cause of action based upon sections 5953 and 5954 in Ballinger's Code and Statutes of Washington would be in violation of defendant's rights as expressed in clause 1 in section 2 of article 3 of the Constitution of the United States, as follows, to wit: "The judicial power shall extend—to all cases of admiralty and maritime jurisdiction, * * * " and subdivision 8 of section 563 of the Revised Statutes of the United States, which provide that "the district courts shall have jurisdiction as follows: of all civil causes of admiralty and maritime jurisdiction" (R., 16 to 25).

To this answer the defendant in error filed a reply consisting of denials of various paragraphs thereof (R., 27).

The case came on for trial on the 17th of November, 1906, before the court, without a jury, and afterwards, on the 26th day of January, 1907, the court made and filed its memorandum of decision wherein it held in favor the plaintiff (defendant in error), holding that it had jurisdiction of the subject-matter, and overruling the objections of the defend-

ants (plaintiffs in error) to the jurisdiction (R., 32). On the same day there was made and filed findings of facts and conclusions of law, and judgment in accordance with said decision (R., 34 to 36).

That thereafter, on the 6th day of May, 1907, the defendants (plaintiffs in error) duly appealed from the judgment of said court to the Supreme Court of the State of Washington (R., 42), which court, on October 29, 1907, rendered its opinion on said appeal, sustaining the objections of the appellants therein (plaintiffs in error) to the jurisdiction of the State court, and reversing the judgment of the court below, with instructions to dismiss the action (R., 394-402). (47 Washington, 417.)

Thereafter the defendant in error petitioned the Supreme Court of the State of Washington for a rehearing, and during the pendency of said petition this court rendered its decision in the cases of *Cleveland Terminal & Valley R. Co. vs. Cleveland Steamship Co.*, 208 U. S., 316, and *The Troy*, 208 U. S., 321, which, being called to the attention of the Supreme Court of said State, it thereupon granted the petition for rehearing, and on the 14th day of November, 1908, filed its opinion reversing its former action, and affirming the judgment of the court below upon the strength of the said decisions of this court, holding that the statute of the State of Washington applied to a foreign vessel engaged in interstate commerce, and that it gave a lien upon such vessel for the wrong and consequent injury to the bridge (R., 403). On the 6th day of January, 1909, the said Supreme Court of the State of Washington rendered its judgment in accordance with said opinion affirming the judgment of the court below (R., 406).

It is, therefore, to reverse such judgment that this writ of error has been sued out upon the following assignment of errors:

I.

The Supreme Court of the State of Washington erred in holding that the Superior Court of the State of Washington in and for Chehalis county had jurisdiction of the subject-matter of this action, and that said superior court did not err in overruling and denying the demurrer of plaintiffs in error to the complaint of defendant in error, and in holding the courts of admiralty of the United States had no exclusive jurisdiction of the cause of action alleged, and that such an assumption of jurisdiction by said superior court was not in conflict with clause 1, section 2, of article III of the Constitution of the United States, to wit:

“The judicial power shall extend to all cases of admiralty and maritime jurisdiction,”

and subdivision 8 of section 563 of the Revised Statutes of the United States:

“The district court shall have jurisdiction as follows: of all civil causes of admiralty and maritime jurisdiction,”

and for these reasons:

1st. In holding and deciding that the allegations of paragraph three of the complaint of the defendant in error (plaintiff and respondent below), that the collision between the steamer “Norwood” and the bridge of the defendant in error “broke and injured the piers supporting the plaintiff’s said bridge to such an extent that within a few hours thereafter one of the spans of the plaintiff’s said bridge collapsed and fell into the waters of the said Chehalis river and was broken up and almost utterly destroyed,” did not show that the cause of action was one within the exclusive jurisdiction of the courts of admiralty of the United States and that the State court did not have jurisdiction.

2d. In holding that the character of the structure colliding with the vessel, as to its being connected with the land or otherwise, was the sole determining factor as to jurisdiction, without regard to the locality of the substance and consummation of the wrong complained of.

II.

The Supreme Court of the State of Washington erred in holding that the statute invoked by defendant in error, namely, sections 5953 and 5954 of Ballinger's Code and Statutes of Washington, is applicable to the facts in this case in this, to-wit:

1st. That said statute was not intended to and does not include in its terms injuries to a fixed structure like a bridge.

2d. That said statute was not intended to and does not give a lien on foreign vessels engaged in interstate commerce.

III.

That the interpretation and construction placed upon said sections 5953 and 5954 of Ballinger's Code and Statutes of Washington by the Supreme Court of the State of Washington, in holding and deciding that said statute of the State of Washington gave a lien upon a foreign vessel engaged in interstate commerce for injuries to a permanent structure like a bridge, which may be enforced in the State courts, is an interference with foreign and interstate commerce, and is repugnant to and in conflict with the Constitution and laws of the United States, and especially with section 8 of article I of the Constitution of the United States, which provides, among other things, as follows:

"Congress shall have power: To regulate commerce with foreign nations and among the several States."

IV.

That the interpretation and construction placed upon said sections 5953 and 5954 of Ballinger's Code and Statutes of Washington by the Supreme Court of the State of Washington in holding and deciding that said statute of the State of Washington gave a lien upon a foreign vessel engaged in interstate commerce for injuries to a fixed and permanent structure like a bridge would be to deprive the owners of the steamer "Norwood" of their property without due process of law and without the equal protection of the law, and is repugnant to and in conflict with the Constitution and laws of the United States, and especially with section 1 of article XIV of the amendments to the Constitution of the United States, which declares that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

V.

The Supreme Court of the State of Washington erred in affirming the judgment and decision of the said Superior Court of the State of Washington in and for Chehalis county, in denying the motion of the plaintiffs in error, at the conclusion of the trial, for a judgment upon the evidence offered and submitted, for the reason that it appeared from said evidence and the admissions of the pleadings that the substance and consummation of the wrong and injury complained of was in and upon the waters of the Chehalis river, a public navigable stream, upon which commerce is carried in steam and sailing vessels to and from points on said river in the State of Washington to other States and foreign countries, and that it appeared that it was not a case within the jurisdiction of the said court, but wholly within the jurisdiction of the courts of admiralty of the United States.

ARGUMENT.

Under the error assigned it would seem that the questions raised on this writ of error can be resolved into two propositions:

First. Whether or not, on the face of the record, it appears that this was an action within the exclusive jurisdiction of the admiralty or Federal and not within the jurisdiction of the State courts.

Second. Whether or not sections 5953 and 5954 of Ballinger's Code and Statutes intended to and included in terms injuries to a fixed structure like a bridge; and, if so, give a lien on a foreign vessel engaged in interstate commerce for such injuries; and if such sections by their terms give a lien upon a foreign vessel engaged in interstate commerce for injuries inflicted by it to a bridge, is the State law repugnant to and in conflict with the statutes of the United States?

On the first proposition the plaintiffs in error contend that it appears affirmatively on the face of the record that the jurisdiction of the cause of action and the subject-matter was exclusively in the courts of admiralty of the United States, and that, therefore, the State courts did not have jurisdiction. The wrong and injuries complained of are set forth in the third and fourth paragraphs of the complaint as follows:

III.

"That on the 7th day of May, 1906, the defendants were engaged in operating the said steamer Norwood, together with her boiler, engines, tackle, apparel and furniture, in the vicinity of the plaintiff's said bridge, said steamer Norwood being under her own steam and motive power and being in the possession of and under the control and command of

the defendant Martin, and that on said date, while the defendants were engaged in passing their vessel through the draw of said bridge, the defendants negligently, carelessly and through failure to exercise ordinary skill in the handling, management and navigation of said vessel, ran said vessel against the supporting piers of one of the spans of plaintiff's said bridge, and thereby, through the carelessness and negligence of the defendants, struck, broke and injured the piers supporting the plaintiff's said bridge to such an extent that within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the said Chehalis river and was broken up and almost utterly destroyed."

IV.

"That because of said injury to the plaintiff's said bridge the plaintiff will be put to great expense to repair the same and the plaintiff will be thrown out of the use of said bridge for a long period of time, and will lose the profits thereof, and that plaintiff has been damaged by reason of the premises in the sum of \$15,000.00" (R., 2).

The plaintiff in error demurred to the complaint on the ground of lack of jurisdiction and that it did not allege facts sufficient to state a course of action, which demurrer was overruled (R., 14 & 15).

From the admissions of the pleadings it appears that the Chehalis river, where the bridge of the defendant in error crossed it, is a navigable stream for all commercial purposes, and in which for a number of miles inland the tides ebb and flow (R., 19, par. 4).

The findings of the trial court substantially follow the allegations of paragraphs 3 and 4 of the complaint stated above.

The answer among other defenses set up that the court had no jurisdiction and ought not to proceed to enforce the claim alleged in the complaint either against the steamer

"Norwood" or against the defendant, because it was in violation of defendant's rights as expressed in section 2 of article 3 of the Constitution of the United States.

LOCALITY AS FIXING THE JURISDICTION.

The leading case defining what is and what is not a maritime tort is doubtless the "Plymouth," 3 Wall., 20. This case was relied upon by the defendant in error in the court below to show that the State courts had jurisdiction, and was relied upon by the plaintiffs in error to show that they did not have jurisdiction. Manifestly an analysis of what was decided in this case would tend very much to show whether or not the point is well taken; that on the face of the record the State courts did not have jurisdiction, and that the wrong and injury complained of is within the exclusive jurisdiction of the admiralty. In the case cited a vessel lying at a wharf in the Chicago river took fire, which spread to certain warehouses on the wharf and consumed them and their stores. A libel was filed against the owners of the vessel. It was held not to have been a case of admiralty jurisdiction. This court in that case says, page 33:

"The origin of the wrong was on the water, but the *substance and consummation of the injury on land*. It is admitted by all the authorities, that the jurisdiction of the admiralty over marine torts depends upon locality—the high seas, or other navigable waters within the admiralty cognizance; and being so dependent upon locality, the jurisdiction is limited to the sea, or navigable waters not extending beyond high-water mark.

Again, page 35—

"that the wrong and injury complained of must have been committed wholly upon the high seas, or navigable waters, or, *at least, the substance and consummation* of the same must have taken place upon these waters to be within the admiralty jurisdiction.

In other words *the cause of damage*, in technical language, whatever else attended it, must have been there complete."

And again, page 36:

"We can give, therefore, no particular weight or influence to the consideration that the injury in the present case originated from the negligence of the servants of the respondents on board of a vessel, except as evidence that it originated on navigable waters—the Chicago river; and, as we have seen, the simple fact that it originated there, but, the whole damage done upon land, the cause of action not being complete on navigable waters, affords no ground for the exercise of the admiralty jurisdiction. *The negligence, of itself, furnishes no cause of action; it is damnum absque injuria.* * * * The whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon which the jurisdiction depends—on the high seas or navigable waters."

It is apparent that in the case of the "Plymouth" the jurisdiction is made to depend upon the locality where the cause of action arose. The substance and consummation of the injury complained of must have taken place on the high seas, or navigable waters, in order that the admiralty should have jurisdiction.

The rule announced in the "Plymouth" that locality controls the jurisdiction was followed by this court in the following cases: *Phoenix Ins. Co.*, 118 U. S., 610; *Johnson vs. Chicago Elevator Co.*, 119 U. S., 388; *Cleveland, etc., R. R. Co. vs. Cleveland Steamship Co.*, 208 U. S., 316; *Duluth Superior Bridge Company vs. Steamer (Troy)*, 208 U. S., 321.

In all these cases the wrong or negligence occurred on navigable waters, but the injury and damage was consummated on the land.

THE COUNTER PROPOSITION TO THAT INVOLVED IN THESE CASES MUST, ON THEIR REASONING AND AUTHORITY, BE EQUALLY TRUE, VIZ: THAT IF THE WRONG OR NEGLIGENCE ORIGINATES ON THE LAND, BUT THE SUBSTANCE AND CONSUMMATION OF THE INJURY AND DAMAGE—IN OTHER WORDS, THE CAUSE OF ACTION—TAKES PLACE UPON THE HIGH SEAS OR NAVIGABLE WATERS, THE ADMIRALTY MUST HAVE EXCLUSIVE JURISDICTION. This is illustrated in the case of *Hermann vs. Port Blakeley Mill Co.*, 69 Federal, 646. In this case a vessel was being loaded with lumber. While she was lying at the wharf, and while being loaded, the libelant was in the hold of the vessel, with several of the crew, engaged in receiving the lumber. The manner of loading was to slide the lumber down a chute into the hold, and as each piece was slid down warning was given to enable the crew to escape from the descending lumber. This warning was relied upon by the libelant. It was alleged that the defendant so carelessly, negligently, and improperly slid down a piece of lumber without giving any warning to those in the hold that it struck the libelant, breaking his leg, to his damage in the sum of \$10,000. Exception was taken to the libel on the ground that the court had no jurisdiction of the tort alleged. The court, speaking through Judge Morrow, after referring to and quoting from the opinion in the "Plymouth," says (page 648):

"Applying this reasoning to the case at bar—although the facts alleged in the libel present a counter proposition to that involved in the Plymouth, in this, that in the latter case the origin of the tort was on water, while in the case at bar it is alleged to have been on land—it would seem to be strong argument in favor of the jurisdiction of the court. For, if it is the locality where the substance and the consummation of the tort happened which is the ultimate test of admiralty jurisdiction, and not the origin, the case at bar clearly comes within the rule. What the learned justice says, in the concluding sentence of the paragraph just quoted, about the cause of action

not being 'complete on navigable waters,' has reference, plainly, from a reading of the whole opinion, to the substance and consummation of the tort; that is to say, the locality where the injury is inflicted, and the damage sustained. This latter must be upon the high seas, or the navigable waters, in order to be within the admiralty jurisdiction."

And again (page 657) :

"I think that the only true and rational solution of the jurisdictional question, where the tort occurs partly on land and partly on water, is to ascertain the place of the consummation and substance of the injury. *This latter element of the wrong is necessarily the only substantial cause of action*, otherwise it would be '*damnum absque injuria*.'"

The court held that notwithstanding that the wrong and negligence took place upon the land, the injury and damage was consummated on navigable waters, and, therefore, within the admiralty jurisdiction.

THE APPLICATION OF THE DOCTRINE OF THESE CASES TO THE FACTS PLEADED AND FOUND IN THE CASE AT BAR.

It is clear from these decisions that the jurisdiction depends upon where the cause of action arose and that there are two essential ingredients to the cause of action, viz: a wrong, and damage resulting from that wrong. Both must concur. The wrong without damage is *damnum absque injuria*. It appears from the third paragraph of the complaint that by reason of negligence and want of skill the captain of the steamer "Norwood," in passing through the draw of the bridge ran the vessel against the supporting piers of one of the spans of the bridge which broke and injured the piers supporting the bridge "to such an extent that within a few hours thereafter one of the spans of plaintiff's said bridge collapsed and fell into the waters of the said

Chehalis river and was broken up and almost utterly destroyed." In the fourth paragraph it is alleged that because of said injury to said bridge the plaintiff was damaged in the sum of \$15,000 (R., p. 2). The allegations in regard to the negligence and injury to the bridge were found as facts by the court in substantially the same language as alleged (R., p. 35).

It is clear from these allegations and findings that the wrong complained of is the negligence in navigating the vessel, so that she ran against the supporting piers of one of the spans of the bridge. *The substantial damage consisted in (some hours thereafter) the span falling into the river and being broken up and almost wholly destroyed.*

The Supreme Court of the State of Washington in its first opinion says in regard to this phase of the case:

"In any event, even if it shall be held that we are in error in the foregoing interpretation of the scope of Federal decisions, still there is another element in this case which we think, within the technical distinctions which have been made in the decisions, must bring the case within admiralty jurisdiction. The complaint alleges that the appellants 'negligently, carelessly, and through failure to exercise ordinary skill in the handling, management, and navigation of said vessel, ran said vessel against the supporting piers of one of the spans of plaintiff's said bridge, and thereby, through the carelessness and negligence of the defendants, struck, broke, and injured the piers supporting plaintiff's said bridge to such an extent that within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the said Chehalis river, and was broken up and almost utterly destroyed.'

"It is manifest from the foregoing that at least a substantial part of the resulting injury was consummated on the very surface of and in the water itself. If the other facts discussed were not sufficient of themselves to establish a maritime locality for the

resulting injury, certainly this additional circumstance must complete the chain of facts necessary to do so."

In its second opinion on the rehearing the Supreme Court on this point, speaking of *Cleveland Terminal, etc., Co. vs. Cleveland Steamship Co.*, 208 U. S., 316, and *The Troy*, 208 U. S., 321, says:

"The two cases cited were companion cases in their facts, although one was appealed from the northern district of Ohio and the other from the western district of Wisconsin. The decisions were rendered on the same day, and the decision in *The Troy* was based upon the opinion in the first case cited. So far as the question of locality is concerned, those decisions are binding upon this court. In our former opinion, we simply endeavored to anticipate what would be the decision of the higher tribunal in such a case, and now we find we were mistaken, it becomes our duty to reverse our former holding upon this subject, unless a further feature suggested by appellants has the effect to establish the locality of this injury as a maritime one. We refer to the matter mentioned at the close of the former opinion, where it was suggested that, inasmuch as the damage was largely effected by the action of the water after the bridge fell, the locality of the damage was for that reason a maritime one. We were of the view when that opinion was prepared that the Federal Supreme Court was disposed to give much force to the matter of locality in determining the dividing lines between admiralty jurisdiction and that of the State courts, and that very technical distinctions had been observed in order to fix the locality as being either maritime or non-maritime. The later decisions cited above seem, however, to give more force to the character of the structure colliding with the vessel, it being connected with the land or otherwise, as the determining factor, than to the mere matter of locality which was so much discussed in the earlier decisions. We therefore believe that there are no facts

in this case to distinguish it from the later decisions cited so far as the matter of locality is concerned, and that upon that question the admiralty court has not jurisdiction" (R., p. 403-4).

In its first opinion the Supreme Court of the State of Washington says:

"It is manifest from the foregoing that at least a substantial part of the resulting injury was consummated on the very surface of and in the water itself."

In its last opinion it says:

"We refer to the matter mentioned at the close of the former opinion where it was suggested that inasmuch as the damage was largely effected by the action of the water after the bridge fell, the locality of the damage was for that reason a maritime one."

It therefore clearly appears that in ^{the} view of the Supreme Court of the State of Washington, *which had the facts before it*, the substance and consummation of the injury and damage took place on navigable waters, and for that reason in its first decision it was of the opinion that there was a case within the admiralty jurisdiction. In its second decision its opinion was apparently not changed in regard to the fact that the substance and consummation of the injury had taken place on navigable waters, but it reaches the conclusion that this court by its later decisions gives more force to the character of the structure colliding with the vessel than to the locality of the damage. In this, we take it, the Supreme Court of the State of Washington is in error. The case of *Cleveland Terminal, etc., Co. vs. Cleveland Navigation Co., supra*, has in no way changed the doctrine of locality. Indeed, this court, in its opinion, cited with approval Mr. Justice Nelson's opinion in *The Plymouth* and cited the subsequent decisions of this court in support of the proposition that the substance and consummation of the wrong

must have taken place upon navigable waters to be within the admiralty jurisdiction, saying, page 319:

"A substantial cause of action arising out of the wrong must be complete within the locality on which the jurisdiction depended."

In the case cited the damage upon which the libel was placed consisted in injuries inflicted to the center pier of a swinging or draw bridge, to the protecting piling work surrounding such pier, to one of the shore abutments of the bridge and to a dock or wharf below the bridge. It was held by this court that these damages were to the land, and therefore that the admiralty had no jurisdiction, *but it nowhere appears in the libel that the substance and consummation of the damage took place on navigable waters, as is alleged and found in the case at bar.*

The principle we are contending for is illustrated and applied in an opinion by Judge Brown in 1885 in the southern district of New York. In that case certain steel blooms were unloaded upon a wharf; before they were removed the pier broke down and they were thrown into the river; some were lost and others damaged. It was alleged that the wharf was rotten and insufficient, through neglect of the wharfingers, by not keeping it in proper repair for the business for which it was held out to the public. Exceptions were filed to the libel raising the question of jurisdiction. Upon this point the court says, page 837, *City of Lincoln*, 25 Fed., 835:

"In this case the wharfingers' negligence was wholly upon the land, or in reference to a structure resting upon, and built into the ground; but the injury to the libellants' steel-blooms was effected wholly in the water, into which they were thrown through the breaking down of the wharf. The whole substance and consummation of the injury were, therefore, in the water. It was the water that did the damage. That was the place of the damage, and consequently the place of the tort, for the purposes of jurisdiction.

Had the goods been, for instance, crockery or glassware, which were broken or otherwise injured through the breaking down of the wharf, but without being thrown into the water, the injury in that case would have been consummated upon the land, and no jurisdiction in admiralty would have been attached. *Rock Island Bridge*, 6 Wall., 213; *The McMary Stewart*, 10 Fed. Rep., 137; *The Accame*, 20 Fed. Rep., 642. If the blooms, in this case, had not been thrown into the water, the injury in question would not have arisen. But as the injury was caused wholly by the water into which the blooms were thrown, if this arose through the wharfingers' negligence, such negligence was a marine tort, of which this court has jurisdiction."

In *Riley vs. Phil. and R. R. Co.*, 173 Fed., 839, decided by Judge Adams, the counter proposition was involved. Plaintiff's intestate was injured on a vessel in the Delaware river, and died of such injury, on the following morning, in a hospital on shore. It was held that the admiralty had no jurisdiction over a suit to recover damages for negligence causing the death. In this case, while the injury was received on navigable waters, the consequence of the injury, viz., death, was consummated on the land. Therefore, the admiralty denied jurisdiction. The injury received took place on navigable water, and if death had not ensued a court of admiralty would have had jurisdiction of an action to recover. But the fact of death brought it within the rule that jurisdiction attaches where the substance and consummation of the injury was complete.

In the case at bar the pier of the bridge was injured by the collision. The consequence of that injury was that the span of the bridge fell into the river some hours afterwards, and was almost utterly destroyed. Here is a tort having its inception on the land, but the substance and consummation on navigable waters. It would seem that there would be no escape from the conclusion that it was a maritime tort, within the exclusive jurisdiction of a court of admiralty.

That the State supreme court was in error in regard to the scope and effect of "the later decisions" referred to in its opinion as changing the rule of "locality" in fixing jurisdiction, seems clear. In concluding this part of the brief we desire to again call attention to the fact that the supreme court of the State, *having the record before it*, found that the substance and consummation of the injury "*took place on the surface of and in the water itself*," and that it changed its former decision on the assumption that this court in the case of *Cleveland Terminal & V. R. Co. vs. Cleveland Steamship Co.*, 208 U. S., 316, had departed from the rule established in the "Plymouth" and subsequent decisions.

The opinion of the State Supreme Court on rehearing is largely based upon the decisions of this court in *Cleveland Terminal & Valley R. Co. vs. Cleveland Steamship Co.* (208 U. S., 316) and *The Troy* (208 U. S., 321). In those cases it was held that the remedy for injuries committed by a vessel to land structures (including bridges) was not in admiralty, and, as those cases were brought in the United States district court in admiralty, dismissal followed. But this ground alone is not, we submit, conclusive in the case at bar. Examining the records in the cited cases, we fail to find any averment as to where the vessels there involved were registered, and the question here presented is not raised therein. It was simply held that admiralty did not have exclusive jurisdiction because the tort or injury committed was not in character or locality within the admiralty jurisdiction.

The field of admiralty jurisdiction peculiarly presents questions involving technical discussion and nice distinctions. Perhaps the best illustration of this is found in *The Blackheath*, 195 U. S., 361, where Mr. Justice Holmes, supporting the admiralty jurisdiction in a case involving injury to a beacon supported on piles driven in the bottom of the Mobile river, very aptly says, page 365:

"The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history."

These questions are as serious as they are important in every practical phase. The ultimate of all judicial discussion in respect of admiralty jurisdiction, procedure and remedies has certainly not yet been reached. The reports of this court abound with decisions on the subject. They have often been misinterpreted and misapplied by other courts because of variant conditions of fact which sometimes confused clear judgment and often created sound distinctions in respect of applicable principles. Here, for illustration, we find a case of prime importance upon the question whether a vehicle of interstate commerce actually loaded with interstate freight, whose voyage is interrupted after in law the journey has commenced by loading of the interstate commodity into the vessel and actual delivery thereof to the ship as a common carrier for hire, can be thus seized. Assuming no other available mode of transportation and interstate commerce is instantly and indefinitely blocked by the operation of a lien law of the State. Certainly there has been no express statutory authority for such result to be found in the Federal enactments.

In the case of *The Roanoke*, 189 U. S., 185, the very statute of the State of Washington here invoked to sustain this proceeding was declared unconstitutional, because giving a lien thereunder *in rem* against a foreign vessel for supplies furnished or repairs made in a port of that State. In the course of that opinion it was said (pp. 197, 198):

"In *Hall vs. De Cuir*, 95 U. S., 485, 498, it was said that—

"Inasmuch as interstate commerce is regulated
 "very largely by congressional legislation, it fol-
 "lowed that such legislation must supersede all State
 "legislation upon the same subject, and, by neces-
 "sary implication, prohibit it, except in cases where
 "the legislation of Congress manifests an intention

“to leave some particular matter to be regulated by the several States, as, for instance, in the case of pilotage. *Cooley vs. Board of Wardens*, 12 How., 299. Upon this principle it was held that a law of Louisiana excluding colored passengers from the cabin set apart for the use of whites during the passage of steamboats down the Mississippi was a regulation of interstate commerce, and therefore unconstitutional. To the same effect is *Sinnott vs. Davenport*, 22 How., 227. In the subsequent cases of *Louisville, &c., Railway vs. Mississippi*, 133 U. S., 587, and *Plessy vs. Ferguson*, 163 U. S., 537, State laws requiring separate railway carriages for the white and colored races were sustained upon the ground that they applied only between places in the same State.”

Clearly, there can be no difference between passenger transportation and freight transportation, where both have actually begun the voyage by embarking in the one case or being loaded in the other upon the same vessel. In each instance the interstate *status* has begun, though the vessel has not cast off from the shore. The business has become interstate and is clearly subject only to the regulation of Congress, *except* where by statute Congress has expressly or impliedly recognized the right of the State to enact laws regulating the subjects. We are unable to find that Congress has relinquished such control in cases like that at bar. As certainly the interstate commerce relation has begun by embarking or loading, and once begun, we submit, it cannot be suspended or wholly prohibited under authority of State law, which undertakes to destroy the continuity of transportation by seizure of the instrument of interstate commerce when engaged in the very act of performing the interstate commerce service.

The rule applied by the court below would equally apply to a ship of a foreign flag committing a tort of the nature here involved in the territorial waters of the State. And although such foreign vessel were loaded with freight des-

tinued beyond seas, the same effect could follow and enormous loss and delay suffered by enforcement through attachment and sale of the vessel under judgment obtained in a State court or under State law. The admiralty law is the law of the civilized world; State law would be unknown to the owners or master of the vessel thus situate. The distinction suggested between a proceeding *in rem* against the vessel and personal action against the master and owners, with attachment of the vessel, whereby the former is forbidden in State courts and the latter recognized, is in practical effect a distinction without a difference. The practical result is to subject the foreign or interstate commerce with which the vehicle of transportation is loaded to the burden of State law wholly unknown to the foreign carrier, and equally burdensome in effect upon the interstate commerce in which such vehicle is at the moment of such attachment engaged. Unless, therefore, Congress has in clear and explicit manner transferred jurisdiction in such cases to the States, State law and State tribunals cannot invade the domain of interstate and foreign commerce by such drastic enactments. Property of the States, registered, operated, or owned within the State, may be held thus responsible, but with all respect, we submit, that to the case presented by this record State enactment should not extend.

Whilst the Supreme Court of Washington has held the statute of that State applicable to sustain the attachment of the vessel thereunder for the tort alleged, it by no means follows that such construction by that court can be accepted as binding in this court.

In construing the statute of the State of New York dealing with liens, Mr. Justice Story, in *The Chusan*, ~~1851~~, further said:

“ I ought to add, that I entertain not the slightest
 “ doubt that that statute was never intended to be
 “ applied to cases of foreign ships, or the repairs
 “ thereof, but was designed to be auxiliary to the

"maritime law, and to give it an extended application to domestic ships, from motives of public policy and general convenience."

2 Story 455, Fed. Cases Vol. 5 No 2717.

In *Guffey vs. Alaska & P. S. S. Co.*, 130 Fed. Rep., 271-278, the United States Circuit Court of Appeals for the Ninth Circuit, in considering the same statute of the State of Washington, aptly said:

"It is unnecessary to cite authorities to the point that such a lien law is to be strictly construed. It is true that in some contracts and in some relations the charterer, by demise, is to be deemed the owner *pro hac vice*. But in construing a statute which specifies only that the lien may be created by the owner, master, agent, or consignee, we know of no rule or principle of construction which authorizes us to read into it the word 'charterer.'"

And the rule that a statute is to be so construed, if possible, as to leave it a valid enactment, is too well settled to require discussion or citation of authorities.

II.

THE STATE LAW EITHER DOES NOT INCLUDE THE CASE OF INJURY TO A BRIDGE BY A FOREIGN VESSEL ENGAGED IN INTERSTATE COMMERCE OR, IF IT DOES, IT IS CLEARLY UNCONSTITUTIONAL AND VOID.

This involves the construction and validity of sections 5953 of Ballinger's Code and Statutes. If this court should hold that our contention under the first proposition, that this was a case clearly within the admiralty jurisdiction is not well taken, then, we contend, the statute upon which the action is based was not intended to and does not include in its terms injuries to a fixed structure like a bridge; that it does not give a lien upon a foreign vessel engaged in inter-

state commerce for such injuries and if it does by its terms or construction give a lien upon a foreign vessel engaged in interstate commerce for injuries inflicted by it on a bridge, it is repugnant to and in conflict with the Constitution and statutes of the United States. The Washington statute is as follows:

"SEC. 5953. All steamers, vessels, and boats, their tackle, apparel and furniture, are liable,—

"1. For services rendered on board at the request of or on contract with their respective owners, masters, agents or consignees;

"2. For supplies furnished in this State for their use, at the request of their respective owners, masters, agents or consignees;

"3. For work done or material furnished in this State, for their construction, repair, or equipment, at the request of their respective owners, masters, agents, consignees, contractors, sub-contractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, sub-contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair, or equipment of any vessel shall be held to be the agent of the owner, for the purposes of this chapter;

"4. For their wharfage and anchorage within this State;

"5. For non-performance or mal-performance of any contract for the transportation of persons or property between places within this State or to or from places within this State, made by their respective owners, masters, agents or consignees.

"6. For injuries committed by them to persons or property within this State, or while transporting such persons or property to or from this State."

"Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such

"liens only continue in force for the period of three years
"from the time the cause of action accrued. "

"SEC. 5954. Such liens may be enforced in all cases of maritime contracts or service, by a suit in admiralty, *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or services not maritime, by a civil action in any district court in this territory."

The State supreme court in its last opinion says:

"It having been determined that admiralty has not jurisdiction, then it must follow the subject is open for State legislation and is within the jurisdiction of the State courts. The statute, section 5953, Bal. Code, provides for liens upon 'all steamers, vessels, and boats, their tackle, apparel and furniture.' It is evidently intended to reach foreign as well as domestic vessels, and the property injured by the vessel need not necessarily be transportable, as argued by appellants. The statute is broad enough to include damage to a permanent structure like a bridge. To give it any other construction would be extremely technical, and we do not think the legislature intended that a restricted or narrow meaning should be given the statute. The statute expressly provides that demands for injuries by the vessel shall constitute liens upon the vessel. Such liens created by State statutes are enforceable in the State courts when the subject matter is not within the jurisdiction of admiralty" (R., p. 404).

I.

Was the Washington statute (sections 5953 and 5954) intended to include, and does it include in its terms, injuries to a fixed structure like a bridge; and, if so, does it give a lien on a foreign vessel engaged in interstate commerce for such injuries?

The first inquiry that arises is: Is this court bound by the

construction of the statute placed upon it by the supreme court of the State. This case is the first one in the history of the State wherein the interpretation and construction of the statute, as applied to a foreign vessel for a tort, committed to a fixed structure like a bridge, has come before this court. It has, indeed, come before some of the Federal courts, and in the case of *Roanoke* (189 U. S., 185) it was held void as applied to that case upon principles of law which we will show hereafter make it controlling in this case.

IS THIS COURT BOUND BY THE CONSTRUCTION AND INTERPRETATION PLACED ON THE STATUTE BY THE COURT BELOW.

In all cases where it is necessary to determine whether or not the rights secured by the Constitution or some law of the United States have been violated by a State statute or a municipal ordinance, the Supreme Court of the United States will place its own independent construction upon such State law.

Jefferson Branch Bank vs. Kelly, 1 Blk., 436.

Proprietors of Bridges vs. Hoboken Land & Improvement Co., 1 Wall., 116.

Delmas vs. Merchants' Mutual Ins. Co., 14 Wall., 661.

Butz vs. Muscatine, 8 Wall., 575.

Northwestern University vs. Illinois, 99 U. S., 309.

Yick Wo vs. Hawkins, 118 U. S., 356.

Huntington vs. Attrill, 146 U. S., 657.

Mobile & Ohio R. Co. vs. Tenn., 153 U. S., 486.

Scott vs. McNeal, 154 U. S., 34.

Easton vs. Iowa, 188 U. S., 220.

In *Scott vs. McNeal*, *supra*, the Supreme Court of the State of Washington, in construing the State statutes, had held that one who had disappeared for seven years, and

upon whose estate probate proceedings were had upon the presumption that he was dead, was conclusively presumed to be dead. This court, speaking to that point, says:

"The local law on the subject, contained in the Code 1881 of the Territory of Washington, in force at the time of the proceedings now in question, and since continued in force by art. 27, sec. 2, of the Constitution of the State, does not appear to us to warrant this conclusion that the probate court is authorized to conclusively decidé, as against a living person, that he is dead, and his estate therefore subject to be administered and disposed of by the probate court.

"On the contrary, that law in its very terms appears to us to recognize and assume the death of the owner to be a fundamental condition and prerequisite to the exercise by the probate court of jurisdiction to grant letters testamentary or of administration upon his estate, or to license anyone to sell his lands for the payment of his debts."

Review of the legislative history of this statute of Washington will clearly demonstrate that it necessarily applies only to domestic vessels of the State, and that it does not include in its terms injury to a fixed structure like a bridge. The original statute was passed November 8, 1877, while Washington was a Territory. The act was divided into five chapters, the first being as to liens on steamers, vessels, and boats, and is as follows:

"SECTION 1. That all steamers, vessels, and boats, their tackle, apparel, and furniture, are liable:

"First, for all services rendered on board at the request of or on contract with their respective owners, masters, agents, or consignees.

"Second, for supplies furnished in this Territory, for their use, at the request of their respective owners, masters, agents, or consignees.

"Third, for work done or material furnished in this Territory for their construction, repair, or equipment.

"Fourth, for their wharfage and anchorage within this Territory.

"Fifth, for non-performance or mal-performance of any contract for the transportation of persons or property between places within this Territory, or to or from places within this Territory, made by their respective owners, masters, agents, or consignees.

"Sixth, for injuries committed by them to persons or property within this Territory or while transporting such persons or property to or from this Territory."

"Demands for these several causes constitute liens upon all steamers, vessels, and boats, and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued.

"SEC. 2. Such liens may be enforced by suit in admiralty *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits." Laws 1877, p. 216.

It will be observed that subdivision 3 of the first section of this act has been amended (see section 5953, Ball. Code, *supra*); section 2, providing the remedy has also been amended by adding after the word "enforce," on the first line, the words "in all cases of maritime contracts or service," and by adding to the end of the section the following: "and in all cases of contracts or service not maritime by civil action in any district court of this Territory." It is apparent, we take it, that when the legislature of 1877 passed the above statute, it had in contemplation proceeding *in rem*. to enforce the liens therein provided for. This is manifest by the opening paragraph of section 1, that all steamers, vessels, and boats, their tackle, apparel, and furniture, are *liable*. This language is clearly borrowed from the phraseology employed in admiralty. *It purports to make the vessel*

liable, not the owner of the vessel; and that such was the intention appears beyond the power of contradiction by the second section, providing that such liens shall be enforced by suit in admiralty *in rem*. The principle of maritime law—that the vessel in whosoever hands she lawfully is, is herself considered the wrongdoer, and liable for the tort and subject to a maritime lien for damages (*Ralli vs. Troop*, 157 U. S., 386-403; *Ramsdell Trans. Company vs. Campagnie Gen. Trans. Atlantique*, 182 U. S., 406-414)—was apparently clearly in the mind of the legislature when this act was passed. It is also apparent that, with this one possible exception, the act related wholly to maritime contracts and causes of action growing out of such contracts. The possible exception referred to arises out of the construction placed by the lower court in its latest opinion in this case on the sixth subdivision. The decision in the case of "The Plymouth" was rendered in 1866. This act, as stated, was not passed until 1877. It will be presumed that the legislature was aware of the decision of this court defining the jurisdiction of admiralty in the matter of torts, and that admiralty would not entertain jurisdiction of a tort consummated on the land. Nevertheless, under the construction placed upon the sixth subdivision of section 1 of this statute, the legislature in 1877 provided for a lien upon a vessel for a tort consummated on the land, which lien would be enforced by a suit in admiralty *in rem*. Such construction leads to absurd results. The court below also declares that the opening words, "All steamers, vessels," etc., includes foreign as well as domestic craft. If foreign vessels were within the purview of the legislature when it passed this act, it is clear that the next five subdivisions are entirely superfluous as applied thereto, for the reason that under the general admiralty law liens for these several causes already existed of which the courts of admiralty had exclusive jurisdiction. It would not have been within the power of the legislature to take from or add to such liens. It is common knowledge that the maritime law

does not give liens against domestic vessels for supplies, material, repairs, service, etc., furnished them in the home ports.

Norton vs. Switzer, 93 U. S., 385.

The Edith, 94 U. S., 518.

Peyroux vs. Howard, 7th Pet., 324.

The Belfast, 7 Wall., 624.

Lottawanna, 20 Wall., 201.

In the absence of a statute no maritime lien exists in favor of a master for service (*Norton vs. Switzer*, *supra*), not even for maritime wages (*The Orleans vs. Pholebus*, 11 Peter, 175).

Manifestly the intention of the legislature of 1877 was to create maritime liens, where, without a statute, none would have existed—that is to say, under this statute a lien would exist against domestic vessels for supplies, material, repairs, service, etc., furnished in the home ports. The master would have a lien for his wages; there would be a lien for wharfage and anchorage; for non-performance and mal-performance of a contract, for none of which, under the maritime law, is there a lien against domestic vessels, and that such liens should be enforced by a suit in admiralty *in rem*.

Clearly the five subdivisions of the act could not be held to apply to foreign vessels, and hence it must be presumed that the legislature did not intend to act beyond the scope of its power and that it intended the statute to operate only upon domestic vessels. If otherwise, the lien sought to be given by the statute would be *pro tanto* void and the act unconstitutional. It is but a natural and just construction of language to hold the sixth class above enumerated provided liens for torts, as one of the same species and limited in application to domestic vessels. And this is made all the more clear by the concluding language of section 1, which makes the demands “for these several causes”—*i. e.*, secs. 1 to 6, inclusive—constitute liens upon all steamers, vessels,

and boats, their tackle, etc., with prescribed order of priority and with "preference over all other demands." But it is obvious that the concluding language of that section, continuing such liens in force for the period of three years from the time the cause of action accrued, could not have priority over all other demands in respect of a foreign vessel without patent conflict with admiralty law and jurisdiction. Construing this section, then, in the light of existing law and settled precedent, it is obvious that, in all parts, the lien therein prescribed had reference alone to domestic and not to foreign vessels.

In 1881 the second section of this act of 1877 was amended to read thus:

"Such liens may be enforced in all cases of maritime contracts or service by a suit in admiralty *in rem*, and the law regulating proceedings in admiralty shall govern in all such cases; and in all cases of contracts or services not maritime, by a civil action in any district court of this territory."

Ballinger's Code, section 5954.

The words in this section, "such liens," unquestionably refer to those enumerated in the preceding section, but it is plain that the words "and in all cases of contracts or services not maritime, by a civil action in any district court of this territory," do not cover cases of tort. The language is "of contracts or services not maritime." Torts do not fall under the head of contract for service, and, as the statute conferring the remedy by lien must be strictly construed, and not extended beyond its plain language, it is obvious the State law, if it thus attempts to create a lien for a tort against a foreign vessel, presents a case of juridical cognizance here, upon the plain inquiry whether State law may create such a lien upon foreign vessels under the circumstances shown by this record.

Applying the State law to domestic vessels only, leaves the State statute standing without such conflict. Applying

the State law to foreign vessels immediately creates such conflict and resulting invalidity. For if this statute can be construed to include a lien against a foreign vessel for a non-maritime tort, it is by virtue of the words "all steamers," etc., found therein. But upon exactly the same reasoning it would include liens upon foreign vessels for maritime torts and contracts which are regulated exclusively by the admiralty. It prescribes, in regard to these supposed liens, its own rules of priority, and those that have preference over all other demands and exist without any record being made thereof for three years, wholly ignoring the doctrine of admiralty in regard to laches and stale demands.

The sixth subdivision of the first section of this statute and upon which this action is based provides

"for injuries committed by them to persons or property within this State or while transporting such persons or property to or from this State."

We contend that this statute was never intended to apply to a tort committed against a fixed structure like a bridge and this is manifest from the words of the statute. Confessedly, the provisions of the statute just set forth limit the right of lien to property injured while being actually transported, or injured while in the performance of some contract or service in relation thereto. The most literal construction that can be given the language of the statute must limit its application to injury of property susceptible of transportation; that is, to movable personal property. Under no rule of interpretation or construction can the statute be made to apply to injuries of the character complained of. If it does, the word "such" has no meaning and this appears from an analysis of the subdivision. The declaration of the statute is that "all steamers," etc., are liable. For what? "For injuries committed by them to persons or property within the State or while transporting such persons or property." Manifestly the property referred to must be capable of being transported. The antecedent of the word "such" is clearly

"persons or property" and shows conclusively that the legislature had in mind property capable of transportation. With this construction that portion of the statute giving the lien plainly harmonizes with that portion of the statute giving the remedy; otherwise, it does not and we have an inconsistency.

The statute as originally passed in 1877 only contemplated a lien that could be enforced "by suit in admiralty *in rem*," which of course would exclude injuries to wharves, piers, bridges, and other fixed structures. By the amendment in 1881 the legislature provided the remedy "in all cases of contracts or service not maritime" by a civil action in the courts of the territory, clearly showing that in the view of the legislature the act provided for liens arising solely from "contracts for service" either maritime or not maritime; those of a maritime character to be enforced by suit in admiralty and those not maritime by a civil suit in the district court. In other words, the statute only contemplates a lien where there has been any "contract or service," in relation to the injured thing. The statute in the plainest terms limits the remedy to such cases.

In support of our views in regard to the construction of subdivisions 1 and 6 of this statute we cite the following authorities:

Waddell vs. Steamer "Daisy," 2 Wash. Ty., 76, 84.

Washington Iron Works vs. Jensen, 3 Wash., 584, 587.

The Chusan, 2 Story, 455; Fed. Cases, 2717, vol. 5, p. 680.

The "Laurel," 113 Fed., 373.

Guffey vs. Alaska, etc., Co., 130 Fed., 271.

The Lyndhurst, 48 Fed., 839.

The Kate, 164 U. S., 458-470.

Cuddy vs. Clement, 113 Fed., 454.

The Iris, 100 Fed., 104.

The Electron, 74 Fed., 689.

In *The Chusan*, *supra*, decided by Mr. Justice Story in 1843, the construction of the New York statute was before the court. The language of the New York statute was "such debt shall be a lien upon such ship or vessel, her tackle, apparel and furniture." The court says, speaking of this language, page 682:

"It is observable, that, in this language, there is no allusion to foreign vessels as contradistinguished from domestic vessels. The object of the provision seems to be to enlarge the maritime law by giving the same remedy in regard to domestic vessels, which already existed in relation to foreign vessels. The fair interpretation is, that it is remedial, and not that it is restrictive."

And again, page 684:

"I have thought it right to say thus much upon the general question of the operation of the statute of the State of New York. I ought to add, that I entertain not the slightest doubt that that statute was never intended to be applied to cases of foreign ships, or the repairs thereof, but was designed to be auxiliary to the maritime law, and to give it an extended application to domestic ships, from motives of public policy and general convenience."

In the "*The Lyndhurst*," *supra*, which also involved the New York statute, Judge Brown says, page 841:

"The libellant, however, claims that his lien continues for a year under the express provision of the State statute. It is unreasonable, however, to suppose that the design of the State statute was to provide a lien for supplies in cases already covered by the maritime law; that is to say, to create two independent liens for the same thing. Judge Story in the case of *The Chusan*, 2 Storey, 455, referring to a similar claim under the New York statute held that the statute was not applicable to foreign vessels; and I have not been referred to any different decision. This should be followed until overruled by higher authority."

In "*The Kate*," *supra*, this court said, page 470:

"But a lien is claimed in virtue of the statute of New York giving a lien upon the vessel for a debt contracted by the master, owner, charterer, builder, or consignee on account of work done or materials or other articles furnished in the State 'for or towards the building, repairing, fitting, furnishing, or equipping' the vessel, or for such provisions and stores furnished within the State 'as may be fit and proper for the use of such vessel at the time when the same were furnished.' Literally or narrowly construed, the statute takes no account of any arrangement or agreement between the charterer and the owner whereby the authority of the former to pledge the credit of the vessel is restricted, although the conditions under which the charterer obtained possession and control of the vessel were known or could reasonably have become known to the person with whom the charterer contracted.

"We are of opinion that the statute need not and should not be so construed. It ought not to be so interpreted as to put it in the power of the charterer and the person with whom he contracts to combine for the purpose of accomplishing a result inconsistent with the known agreement between the charterer and the owner. * * *

* * * * *

"It is unnecessary for the decision of this case to consider whether the statute of New York, if interpreted as claimed by the libellant, would be repugnant to the commerce clause of the Constitution. We decide only that libellant has no lien on the vessel under the maritime law, and that the statute of New York, reasonably construed, does not assume to give a lien where supplies are furnished to a foreign vessel upon the order of the charterer, with knowledge upon the part of the person or corporation furnishing them that the charterer does not represent the owners, but by contract with them has undertaken to furnish such supplies at his own cost."

The case of the "*Daisy*," *supra*, involved the construction of the Washington statute of 1877, and was the first cause

that came before the Supreme Court of the Territory under that statute. It is apparent that at that time, although the lien claimed was for materials furnished in the construction of a vessel, it was the opinion that the statute provided solely for proceeding *in rem*. In construing the statute the court holds to a strict construction and refuses to extend it beyond "a literal reading of the statute."

In *Washington Iron Works vs. Jensen, supra*, the statute for the first time was before the Supreme Court of the State. Its conception of its scope and terms will be gathered from the following language of the court, page 587:

"In most of the States, construction and home port liens have been given by statutes, the same being intended to remedy the deficiency in the admiralty law of the United States and restore the privileges given by the general maritime law as it exists in other commercial countries. The jurisdiction of the State courts and of admiralty supplement each other, the jurisdiction of the State courts terminating where the national jurisdiction begins."

In the case of the "*Laurel*," *supra*, involving this same Washington statute, Judge Hanford, of the United States District Court of Washington, Northern Division, says, page 374:

"The statutes of this State make all boats and vessels liable 'for services rendered on board,' without any exception, and in my opinion entitle a master as well as mariners subordinate to him to a lien for wages earned by services actually rendered; but the rule of strict construction applies, and the courts have no right to extend the law so as to confer a lien for damages claimed for breach of an unperformed contract. The same section of the code gives a lien upon a vessel for nonperformance or malperformance of a contract for the transportation of passengers or property. 2 Ballinger's Ann. Codes & St., Wash., § 5953. These provisions clearly indicate the limitations of the statute. In one case a lien is given, 'for services rendered.' This excludes demands based upon any

other ground than services rendered. The other gives a lien for nonperformance of a contract for transportation of passengers or property, and this excludes every other kind of contract from consideration."

In *Guffey vs. Alaska, etc., Co.*, *supra*, the Circuit Court of Appeals for the Ninth Circuit, in considering the same statute of the State of Washington, aptly said, page 278:

"It is unnecessary to cite authorities to the point that such a *lien law* is to be strictly construed. It is true that in some contracts and in some relations the charterer, by demise, is to be deemed the owner *pro hac vice*. But in construing a statute which specifies only that the lien may be created by the owner, master, agent or consignee, we know of no rule or principle of construction which authorizes us to read into it the word 'charterer.'"

The Supreme Court of the State of Washington in a recent decision has announced a rule of interpretation which we think is peculiarly applicable to this case:

"One of the most valuable aids in the interpretation of a remedial statute is to consider the old law, the mischief, and the remedy, and it is the business of the courts so to construe the law as to suppress the mischief and advance the remedy." *Hookway vs. Thompson*, 56 Wash., 57-60.

Ifad the Supreme Court of the State of Washington applied this salutary rule to the interpretation of sections 5953 and 5954 of Ballinger's Code, they would have readily seen that the mischief to be remedied was the fact that under the general maritime law there was no lien given on a domestic vessel for services, supplies, repairs, materials, etc., and that the intent of the legislature was to remedy these defects and put domestic vessels on a par with foreign. This was announced by this court in 1866 in the case of the *Moses Taylor*, 4 Wallace, 411, and *Hine vs. Trevor*, 4 Wallace,

555, and as far as we have been able to discover has never been departed from.

The rule that the statute is to be construed, if possible, so as to leave it a valid enactment is too well settled to require discussion or citation of authorities.

II.

DOES THE WASHINGTON STATUTE AS CONSTRUED BY THE SUPREME COURT OF THE STATE INVADE THE JURISDICTION OF ADMIRALTY?

The State Supreme Court in its last decision states:

"The statute, section 5953, Ballinger's Code, provides for liens upon 'all steamers, vessels, and boats, their tackle, apparel and furniture.' It is evidently intended to reach foreign as well as domestic vessels." R., p. 404.

The court accordingly held that there was a lien on the vessel for the damage caused to the bridge under and by virtue of the statute notwithstanding that the vessel was owned, registered, and enrolled in the port of San Francisco, State of California, and accordingly affirmed the judgment of the Superior Court of the State of Washington for Chelalis county. In this we claim the supreme court was in error, as such construction and interpretation of the statute brings it in conflict with section 2, clause 1, of article III of the Constitution of the United States.

"The judicial powers shall extend to all cases of admiralty and maritime jurisdiction."

Subdivision 8 of section 563 of the Revised Statutes of the United States is as follows:

"The district court shall have jurisdiction as follows; of all civil causes of admiralty and maritime jurisdiction * * *."

We have heretofore endeavored to show that such construction placed upon the statute by the Supreme Court of the State is erroneous and that the legislature, in enacting the statute and its amendments, had in contemplation no such interpretation of their language as that placed upon it by the State Supreme Court, and that this court is not bound by such interpretation and construction. If, however, this court should not so hold, then we maintain that the statute as construed by the State court invades the jurisdiction of admiralty and is therefore unconstitutional and void.

That a State may enact lien laws as to ships owned within it has long been settled. Not a line, however, of any decision to that effect can be fairly construed as authorizing also liens on ships owned without the State. Indeed, it is questionable whether such liens were intended to be supported, even within the State, beyond the home port, but, be this as it may, they are supported on local ships only. Examine any decision in which one of these liens was directly involved and it will be found to go no further, nay, by plain intendment, to forbid more.

The General Smith, 4 Wheaton, 438.

Peyroux vs. Howard, 7 Peters, 324.

The Belfast, 7 Wall., 624.

The Lottawanna, 21 Wall., 558.

The J. E. Rumbell, 148 U. S., 1.

These cases in the order we have cited them, fairly record the beginning, the continuation, and the present effect of decisions supporting State lien laws on vessels. Many others can be found, but all had to do only with lien laws in home ports. Nor can any fair encouragement be found in them toward extending such liens to vessels beyond home ports. The usual language in these opinions is about what we find in *The Lottawanna*, where Justice Bradley said, page 580:

“So long as Congress does not interpose to regulate the subject, the rights of material men furnish-

ing necessities to a vessel in her home port may be regulated in each State by State legislation."

The local lien was there sustained, for the ship belonged to the port of New Orleans, the services and supplies were furnished there, and there the libel was filed. The "Rumbell" belonged to Chicago, "the residence of the owner and the home port of the vessel," and it was at Chicago that she was libeled. *A decision of this court expressly upholding one of these liens upon vessels of other States is yet to be rendered.* Indeed, the very arguments of the courts sustaining these home-port laws plainly exclude their being extended to ships of other States. The language of this court in *The Belfast*, 7 Wall., 624, 645, plainly suggests this:

"Such a lien does not arise in a contract for materials and supplies furnished to a vessel in her home port, and in respect to such contracts it is competent for the States, under the decisions of this court, to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement."

Moreover, we find excellent authority affirmatively against any such extension. Judge Story in *The Chusan*, *supra*, gave his opinion against it in 1843. He spoke there as a circuit justice familiar with the original organization of our Government, and yet he did not speak on this point theoretically, for in 1843 he had before him *The General Smith* (the opinion there by himself) and *Peyroux vs. Howard*, in which the Supreme Court had permitted the operation of local liens. To both these decisions he refers. But while he is thus one of the very founders of the right of local lien, he is positive neither of the decisions just cited intended to extend it to vessels of other States. Of the New York lien laws he says, in *The Chusan*, page 682 (vol. 5, Fed. Cases):

"This statute is, as I conceive, perfectly constitutional, as applied to cases of repairs of domestic ships, that is, of ships belonging to the ports of that State.

* * * But in cases of foreign ships and supplies furnished them, the jurisdiction of the courts of the United States is governed by the Constitution and laws of the United States, and is in no sense governed, controlled or limited by the local legislation."

* * * (P. 683:) "For myself, I can only say that during the whole of my judicial life I have never up to the present hour, heard a single doubt breathed upon the subject. The distinction between foreign ships and domestic ships as to this very matter of lien was stated with great precision and accuracy by Mr. Justice Thompson in *Peyroux vs. Howard*. * * * Language of similar import was used in the case of *The General Smith*, 4 Wheaton (17 U. S., 443). Now, it is impossible to read this language and not perceive that the court never entertained the slightest notion, that the question of lien for repairs and supplies of a foreign ship did depend, or could depend, upon the local law of a State. It was treated throughout as governed solely by the maritime law. * * * Besides, by the Constitution of the United States, Congress has the power to regulate commerce with foreign nations and among the several States. The power to regulate commerce includes the power to regulate navigation with foreign powers, and among the States, and it is an exclusive power in Congress."

The Chusan was cited with approval twelve years later in *Steamboat New York vs. Rae*, 18 How., 223, in which a local law of navigation of New York was held good as to domestic and bad as to foreign ships; in *Hall vs. De Cuir*, 95 U. S., 485, in 1877; in *The Globe* by Justice Nelson (2 Wall., 427), and in *The Selah* (4 Sawyer, 40).

The Chusan is further approved and followed in *The Edhurst*, 48 Fed., 839, where it was decided that the New Jersey lien law could not be made applicable to a New Jersey vessel.

In *The Electron*, 74 Fed., 689, the question was reserved

as having been already by that court certified to this in another case not mentioned by name.

In the case of *The Roanoke*, 189 U. S., 185, decided by this court in March, 1903, Mr. Justice Brown takes occasion to endorse the principles announced by Mr. Justice Story in *The Chusan*. In our view the decision of this court in *The Roanoke* is decisive of the questions under consideration in this branch of the case. The court there had under consideration the identical statute of Washington now under consideration. The cause of action under consideration in that case was, however, contractual in its origin, and was based on subdivision 3 of section 5953, while the cause of action in the case at bar is upon an alleged tort, and is based on subdivision 6 of the same section.

In *The Roanoke* a lien was claimed on the vessel for labor and material furnished to a subcontractor for her repair. The "Roanoke" was an ocean-going vessel, registered at Chicago under the navigation laws of the United States, and was engaged in trade upon the Pacific coast between Seattle and the mouth of the Yukon in summer and San Francisco and southern ports in winter. The constitutionality of the Washington statute was directly raised upon substantially the same grounds as in the case at bar. This court, speaking to the point whether the Washington statute evades the jurisdiction of the admiralty, after quoting the statute, says, page 193:

"1. That by the maritime law, as administered in England and in this country, a lien is given for necessities furnished a foreign vessel upon the credit of such vessel; *The General Smith*, 4 Wheat., 438; *The Grapeshot*, 9 Wall., 129, Gen. Admiralty Rule 12, and that in this particular the several States of this Union are treated as foreign to each other. *The General Smith*, 4 Wheat., 438; *The Kalorama*, 10 Wall., 204, 212.

"2. That no such lien is given for necessities furnished in the home port of the vessel, or in the port in which the vessel is owned, registered, enrolled, or

licensed and the remedy in such case, though enforceable in the admiralty, is *in personam* only. *The Lottawanna*, 21 Wall., 558; *The Edith*, 94 U. S., 518."

* * * * *

(P. 194:) "3. That it is competent for the States to create liens for necessities furnished to domestic vessels, and that such liens will be enforced by the courts of admiralty under their general jurisdiction over the subject of necessities (citing authorities). * * * *The right to extend these liens to foreign vessels in any case is open to grave doubt. The Chusan*, 2 Story, 455; *The Lyndhurst*, 48 Fed., 839.

"The question involved in this case, however, is whether the States may create such liens as against foreign vessels (vessels owned in other States or countries), and under such circumstances as would not authorize a lien under the general maritime law. The question is one of very considerable importance, as it involves the power of each State which a vessel may visit in the course of a long voyage, to impose liens under wholly different circumstances and upon wholly different conditions."

* * * * *

(P. 195:) "The injustice of permitting such claims to be set up is plainly apparent. The master is the agent of the vessel and its owner in more than the ordinary sense. During the voyage he is in fact the *alter ego* of his principal. He is intrusted with an uncontrolled authority to provide for the crew, and for the preservation and repair of the ship. He engages the cargoes, receives the freight, hires and pays his crew, and is intrusted, perhaps for years, with the command and disposition of the vessel. With full authority to bind the vessel, his position is such that it is almost impossible for him to acquaint himself with the laws of each individual State he may visit, and he has a right to suppose that the general maritime law applies to him and his ship, wherever she may go, unhampered by laws which are mainly intended for local application, or for domestic vessels. Local laws, such as the one under consideration, ordi-

narily protect the ship by requiring notice of the claim to be filed in some public office, limiting the time to a few weeks or months within which the laborer or sub-contractor may proceed against her, requiring notice to be given of the claim, before the contractor himself has been paid, and limiting his recovery to the amount remaining unpaid at the time such notice is received. The statute of Washington, however, provides for an absolute lien upon the ship for work done or material furnished at the request of the contractor or subcontractor, and makes no provision for the protection of the owner in case the contractor has been paid the full amount of his bill before notice of the claim of the subcontractor is received. The finding in this case is that the contractor, who had agreed, in consonance with the usual course of business, to make the repairs upon this vessel, had been paid in full by the claimant. The injustice of holding the ship under the circumstances is plainly manifest.

"Not only is the statute in question obnoxious to the general maritime law in declaring every contractor and subcontractor an agent of the owner, but it establishes a new order of priority in payment of liens, abolishes the ancient and equitable rule regarding 'stale claims,' and permits the assertion of a lien at any time within three years, regardless of the fact that the vessel may have been sold to a *bona fide* purchaser, not only without notice of the claim, but without the possibility of informing himself by a resort to the public records. It also gives, or at least creates the presumption of, a lien, though the materials be furnished upon the order of the owner in person.

"No opinion upon this subject can afford to ignore the admirable discussion of Mr. Justice Story in the case of the *Chusan*, 2 Story, 455, in which he refused to apply to a Massachusetts vessel a law of the State of New York, requiring a lien for supplies to be enforced before the vessel left the State" (quoting from the *Chusan* what we have already quoted).

* * * * *

(P. 198:) "Bearing in mind that exclusive jurisdiction of all admiralty and maritime cases is vested

by the Constitution in the Federal courts, which are thereby made judges of the scope of such jurisdiction, subject, of course, to Congressional legislation, the statute of the State of Washington, in so far as it attempts to control the administration of the maritime law by creating and superadding conditions for the benefit of a particular class of creditors, and thereby depriving the owners of vessels of defenses to which they would otherwise have been entitled, is an unlawful interference with that jurisdiction, and to that extent is unconstitutional and void."

It is clear that this court held the statute of Washington obnoxious to the maritime law not only on the grounds which applied in that particular case, viz., in declaring every contractor and subcontractor an agent of the owner, but also because it established a new order of priority for the payment of liens, abolished the ancient and equitable rule regarding "stale claims" and permitted the assertion of a lien any time within three years, regardless of the fact that the vessel may have been sold to a *bona fide* purchaser without notice of the claim, and without a possibility of informing himself by resort to the public records; created the presumption of a lien, though the material be furnished upon the order of the owner in person, and declared the statute unconstitutional in so far as it attempted to control the administration of the maritime law by creating and superadding conditions for the benefit of a particular class of creditors, thereby depriving the owners of vessels of defenses which they would otherwise have had.

Assuming, for the sake of argument, that the tort alleged in this case is one not within the jurisdiction of the admiralty, nevertheless we contend it is as much an invasion of the exclusive jurisdiction of the admiralty to have to consider and recognize a stale, non-maritime claim as having preference over a maritime claim as to consider and recognize one maritime claim having preference over another. In the decision in the "Roanoke" there is a clear recognition of

the distinction between the status of a foreign ship or a ship in a port of a State to which it does not belong on the one hand, and that a ship in the port of a State to which it does belong on the other. In respect of the latter civil action lies. The same may be said of torts, civilly cognizable under State rule. If the vessel be in the port of a State to which she belongs, the municipal law of that State applies; if she be a foreign ship, or a ship in a port of a State to which she does not belong, as here, it would logically follow that the municipal law of the State does not apply. Hence the lien, here alleged under the State law, would not apply, because the ship was neither registered at any port of the State of Washington, nor was she owned, in whole or in part, by a citizen or citizens of the State.

We submit it is clear that civil liability, whether in contract or in tort, must be measured by the same rule, and that jurisdiction does or does not attach under State law, and in State courts, accordingly as the vessel may or may not be in the port or State to which the ship belongs. In other words, liability in tort does not obtain against a foreign vessel when such vessel would not be liable in contract under the same State law. A sale under a decree in admiralty is good against the world, but under the construction of this statute by the Supreme Court of Washington, holding valid this statute against foreign vessels, a new order of priority of liens is established which wholly disregards the rules of admiralty and the maritime laws of the United States in regard to the sale and mortgaging of vessels.

In the last (4th) edition of Benedict's Admiralty, the author (sec. 198) states the law on this subject to be:

"The State law can impose liens only upon vessels belonging to the State, and not upon foreign vessels."

Hughes, in his work on admiralty, endorses the opinion of Mr. Justice Story in the "Chusan," saying (p. 109):

"The best considered decisions have held that the maritime rights of foreign vessels are independent of these State statutes (as an attempt to regulate them would be to interfere with the general admiralty jurisdiction) and that these State statutes relate only to rights against domestic vessels."

III.

Does the Washington statute as interpreted by the State Supreme Court offend the commerce clause of the Constitution of the United States?

In the answer, and first affirmative defense, paragraphs 2 and 3, it is alleged that the "Norwood" is an ocean-going vessel, registered at San Francisco under the navigation laws of the United States and employed by her owners upon the Pacific coast between the city of San Francisco in the State of California and points in the State of Washington, particularly on Grays Harbor, as a common carrier for hire (R., p. 19). These allegations are not denied in the plaintiff's reply (R., p. 28).

The second finding of the trial court, is that the defendants as

"* * * owners of the steamer 'Norwood,' were engaged in operating said steamer on the said Chehalis river, said steamer making regular runs between Grays Harbor, Washington, and San Francisco, California." R., p. 34.

and further appears from complaint (paragraph 6, R., p. 3):

"that said vessel is at the present time engaged in loading a cargo of lumber at Aberdeen, Washington, preparatory to departing with the same for some port in California."

The answer in terms admits this allegation of the complaint (R., p. 7).

The vessel was therefore foreign to the State of Washington, both in registration and ownership, and was engaged in interstate commerce at the time of its seizure by the receiver, under the order of the court (R., p. 13).

In no part of the subject of interstate commerce with which the organic law has invested the Federal Government, has the jealousy of national policy been so great as in that of navigation. This is one province which, relinquished by the States, has been everywhere occupied and subjected by the General Government. Nothing is left uncertain. Everything has been wrought out in the finest detail. The placing of buoys, the licensing of masters, engineers, and pilots, and even the wages of seamen, have become the subject of statutes.

Nor has this vigilance and care, this exclusiveness of possession, been confined to the legislature. The national courts have been equally zealous. From the time of *Gibbons vs. Ogden*, which announced the Federal authority over navigation, and the "Genessee Chief," which extended the territory of operation of admiralty down to the present day, the decisions of this court and the inferior Federal tribunals have unceasingly maintained and enlarged the original appropriations.

The very sale, hypothecation, and transfer of ships is regulated by the navigation laws of the United States, and those laws have their origin in the interstate commerce provisions of the Constitution. Why should one State be allowed, then, to fasten liens upon vessels of other States and foreign countries? Does this not directly invade the interstate commerce right of the General Government?

Any other view seems full of danger. State liens might become unreasonable. But, grant that they remained reasonable, the very want of uniformity is vexatious to interstate commerce. To this it may be suggested that, if ship-owners do not like the lien laws of other States, they can keep their ships out of them. But this will not do. The duty of the Federal Government to regulate commerce in-

cludes also its duty to protect, and to protect is to promote. It is part of the national policy, under the Constitution, to promote interstate commerce by wise and uniform laws, and, if this last be a consideration for Congress rather than the courts, it is at least the duty of the latter, since they cannot enact laws, to restrain the operation of unreasonable local statutes and regulations.

It is difficult to conceive that the Federal Government will ever permit the encroachment of State liens where both commerce and admiralty are concerned; it is altogether too hard to imagine that it will permit such liens to be unreasonable in themselves. In the "Belfast," 7 Wall. 624, this court, in sustaining (as to home port only) a local lien and allowing State laws to provide regulations for such liens, does not fail to qualify the privilege with the word "reasonable." We may therefore ask whether the present lien as construed by the Supreme Court is reasonable?

For three years this lien continues. No record, no notice actual or constructive, is required. It is wholly secret. No conditions or limitations appear in favor of freeing the ship from the lien at some early day, such as when the ship is transferred to a new owner after a reasonable period, or after her departure from the State. It binds the vessel for three years, and hampers shipping, because men will be afraid to invest their money if, after so long a time, claims for unknown or unsuspected torts can be enforced. In three years' time a ship, it may well be supposed, will have changed hands or have been mortgaged or have incurred other liabilities, no man can tell how many times. Nevertheless, under the construction of this statute by the State Supreme Court, if the vessel should come back into that jurisdiction, she could be seized and held for an alleged tort committed three years before.

A more complete way to entangle shipping and to make vexatious and uncertain a pursuit which, because it is hazardous to begin with, the policy of legislation has been to simplify and protect, would be hard to find than this of Wash-

ington. Let us look at the maritime lien statutes of the several States as they are collected, say, in Jones on Liens (vol. 2, secs. 1736 *et seq.*). Where is there one half so burdensome and unfair as this before us now? In every other State qualification or moderation in some respect is observable, but not in Washington. Some of the States extend the lien only to the original construction of ships, others only to certain kinds of supply or material men. The Washington law as construed by the State Supreme Court sweeps in all. Many of the laws require some public record to afford notice, this of Washington none. Above all things we observe the general moderation as to time, which in none of the statutes exceeds a year, and in many instances is limited to days.

Attacked under the commerce clause of the Constitution, this Washington statute will perhaps be defended as a mere measure for the collection of debts, a thing to which the instruments of interstate commerce are obliged to submit. To this we reply that no State can so frame its laws for the collection of debts as to burden commerce unnecessarily.

The Chusan, Mr. Justice Story, speaking to the point of State interference with interstate commerce, says, page 684 (vol. 5, Fed. Cases):

"If the power to regulate foreign and interstate commerce be, as I conceive it to be, exclusive in Congress, all State interference therewith is unconstitutional and void. Congress, having power to regulate the whole subject, regulates it as much by what it leaves without any positive regulations as by what it expressly provides for. The will of Congress is equally expressed in both cases. It cannot be that a State has a right to step in, and by way of compliment, fill up by its own legislation, what is not actually occupied by that of Congress. Such was the doctrine maintained by the Supreme Court in *Houston vs. Moore*, 5 Wheat. (18 U. S.), 1, 21, 22; *Gibbons vs. Ogden*, 9 Wheat. (22 U. S.), 1, 196-222, and

Holmes vs. Jennison, 14 Pet. (39 U. S.), 540, 569, 574-579."

In *The Roanoke*, 189 U. S., 185, this court, having before it the identical statute and the very same question, in the course of the opinion says (page 197):

"In *Hall vs. De Cuir*, 95 U. S., 485, 498, it was said that—

"Inasmuch as interstate commerce is regulated very largely by Congressional legislation, it followed that such legislation must supersede all State legislation upon the same subject, and, by necessary implication, prohibit it, except in cases where the legislation of Congress manifests an intention to leave some particular matter to be regulated by the several States, as, for instance, in the case of pilotage. *Cooley vs. Board of Wardens*, 12 How., 299."

In *Easton vs. Iowa*, 188 U. S., 220, cited in *The Roanoke*, the plaintiff in error, as president of a national bank, was found guilty under a State statute of receiving deposits after he knew the bank was insolvent. At the trial it was contended (as here) that the statute of Iowa did not, and was not intended to, apply to national banks or the officers and agents of such banks, but solely to domestic banks; that if the State statute should be construed and held to apply to national banks and their officers the statute was void in so far as made applicable to national banks and their officers. Both of these contentions were overruled by the trial court and an appeal was taken to the Supreme Court of the State and the judgment of conviction affirmed. This court, answering the argument of the Attorney General of Iowa to the point that the acts of Congress provide no penalty for the fraudulent receiving of deposits and that the statute is in the nature of a police regulation, etc., said (page 229):

"We think that this view of the subject is not based on a correct conception of the Federal legisla-

tion creating and regulating national banks. That legislation has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of State legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States. Having due regard to the national character and purposes of that system, we cannot concur in the suggestions that national banks, in respect to the powers conferred upon them, are to be viewed as solely organized and operated for private gain."

And again, in conclusion, the court says (page 239) :

"Undoubtedly a State has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction. So, likewise, it may declare, by special laws, certain acts to be criminal offenses when committed by officers or agents of its own banks and institutions. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.

"It was by failing to observe the distinction between the two classes of cases that, we think, the courts below fell into error."

Here, in the case at bar, was a vehicle of interstate commerce actually and actively engaged in such commerce. The lumber so shipped had in fact entered into interstate commerce under the definition of that term given by this court in *Coe vs. Errol*, 116 U. S., 517. Speaking directly to this point, the opinion holds (page 525) :

"There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State of their origin to that of their destination."

The Supreme Court of the State of Washington, in support of its position that the statute was intended to reach foreign as well as domestic vessels, and that the liens created by such statutes are enforceable in the State courts when the subject-matter is within the jurisdiction of admiralty, quotes from the opinion of Mr. Justice Brown in *Knapp, Stout & Co. vs. McCaffrey*, 177 U. S., 638-642:

"The rule to be deduced from these cases, so far as they are pertinent to the one under consideration, is this, that wherever any lien is given by a State statute for a cause of action cognizable in admiralty either *in rem* or *in personam*, proceedings *in rem* to support such liens are within the exclusive jurisdiction of the admiralty courts.

"But the converse of this proposition is equally true, that if a lien upon a vessel be created for a claim over which a court of admiralty has no jurisdiction in any form, such lien may be enforced in the courts of the State" (R., p. 404).

The case cited in no way involved any question arising under the interstate commerce clause. A suit was brought in a court of equity to foreclose a common-law lien on a raft of logs which was then in the possession of the plaintiff, who claimed a lien for services in towing them. The defendants claimed that the cause of action was within the exclusive jurisdiction of the admiralty. This court held that it was within the saving clause of the ninth section of the judiciary act, "saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it." There was no question involved in the case as to the effect of a State statute giving a lien on foreign vessels or with its interfering with interstate commerce. Indeed, the opinion of the learned judge clearly shows that in his remarks quoted by the Supreme Court of the State of Washington he had in mind State statutes whose application is restricted to domestic vessels or their construction, and this

appears beyond peradventure in the later opinion in *The Roanoke*, written by the same learned judge.

In the Supreme Court of the State it was insisted by the defendant in error that the plaintiffs in error had waived objections to jurisdiction, for the reason that they had entered an appearance in the action and had given a bond for the release of the vessel. In its last opinion the Supreme Court of the State on this point said:

"A temporary receiver was appointed by the court, and the vessel was taken in charge by him at the beginning of this action. As suggested by respondent, this was in effect an equitable attachment of the property. The appellants entered an appearance, and executed a bond for the release of the property, which bond was to the effect that appellants will pay to respondent any sum or claim which may be established in this case upon the cause of action mentioned in the complaint. The bond was like that given in the case of *Johnson vs. Chicago & Pacific Elevator Co.*, 119 U. S., 388. The court there said:

"So far, therefore, as this suit is concerned, the action in the shape in which it comes before this court, is a suit *in personam* with an attachment as security, the attachment being based on a lien given by the State statute, and a bond having been by the act of the defendant substituted for the thing attached."

"The situation is analogous to that of an attachment at law where a bond for the release of the attached property has been given, conditioned for the payment of the judgment which shall be obtained in the cause. The security of the bond becomes substituted for that of the released property, and any question as to the regularity of the attachment cannot afterwards be raised."

citing *Brady vs. Onffroy*, 37 Wash., 482 (R., pp. 404 and 405).

In the first opinion, the State Supreme Court, speaking to these objections, says:

"The record discloses a notice of general appearance, filed at a time prior to the filing of the demurrer or answer. If the question here involved was that of jurisdiction of the persons of the appellants, this point would be against them; but if, as they contend, the court had no jurisdiction of the subject-matter of the action, then no appearance they could make could confer jurisdiction. 11 Cyc., 673, 674, and cases cited. (3) For the reason that appellants gave a bond for the release of the 'Norwood' from the hands of the receiver, and that the action then proceeded as an ordinary action at law for damages. It is true the bond stated that the obligors would pay any judgment that should be established upon respondent's cause of action mentioned in his complaint. But it was expressly stated that the personal liability was substituted 'for any security or claim which the said plaintiff A. J. West may have against or in the said vessel "Steamer Norwood," her tackle, apparel, furniture, engines, boilers, etc.' It is therefore evident that if the court had not jurisdiction of the subject-matter of the cause of action stated in the complaint, viz., the enforcement of a lien against the vessel, it could not by virtue of the recitals in the bond enter judgment against the bondsmen whose liability was substituted for that of the vessel on condition that it should be found in said cause that the vessel itself was liable.

"The objection of respondent to the consideration of the question of jurisdiction must therefore be denied" (R., pp. 396 and 397).

Let us see what was the nature of this action. While called a suit *in personam*, it manifestly was a proceeding *in rem*. The complaint avers that the steamer caused the damage alleged, and asserts a lien against it (paragraphs 3 and 5, R., pp. 2 and 3). The prayer is for a temporary and permanent receiver to take and hold possession of said vessel; that plaintiff be adjudged to have a lien upon her for the amount of his damage and costs, and that the vessel, etc.,

"be sold under the order and decree of this court, and that the proceeds arising from such sale after deducting the costs and expenses thereof, be applied as far as necessary to the satisfaction of the plaintiff's said lien and that the defendants be adjudged to be personally liable to the plaintiff for the amount of the plaintiff's said damages and costs and that the plaintiff have personal judgment against the defendants and each of them for the amount of any deficiency remaining after said sale * * *" (R., p. 4).

No judgment is prayed against the defendants except upon the contingency that there be a deficiency arising from the sale of the vessel, and then only for the amount of such deficiency. The interest of the defendant in the vessel is not prayed to be sold; contra, and as in admiralty, decree is prayed against the vessel and for her sale, regardless of the title of the defendants and without regard to its measure. The vessel may have been mortgaged in her home port and such mortgage there alone recorded as required by the Federal registry laws. All interest of such mortgages (if any) was prayed to be thus extinguished by such form of sale as *in rem*, and without notice in any form. In such character of property possession would of course follow sale. All this was in legal effect prayed against the vessel and not limited to the interest of the defendants therein.

The court, upon *ex parte* application, appointed a temporary receiver "*to take immediate possession of said steamer 'Norwood,' her boilers, engines, tackle, apparel, and furniture*" (R., p. 6).

The receiver immediately qualified and took possession of the steamer under the order of the court. The plaintiff in error secured the release of the steamer by giving a bond. The order discharging the receiver recites as follows:

"An order having been made by me in this proceeding on the 9th day of May, 1906, on the application of A. J. West, plaintiff herein, against the vessel 'Norwood,' her tackle, apparel and furniture,

appointing Ed. Payette receiver thereof and the said vessel having been seized by the said receiver by virtue of the said order and the defendants herein, the owners of the said vessel, having applied to me upon due notice to the said plaintiff, the lien claim herein for an order discharging the said vessel from the said receivership, etc., * * * it is ordered that said bond be accepted and the security thereof substituted for said vessel, and that the order heretofore made appointing the said receiver be and the same is hereby vacated and set aside and the receiver is discharged" (R., pp. 8 and 9).

In the bond given for the release of the steamer, which was approved by the court, it is recited—

"That whereas upon the complaint of the said A. J. West, claiming a lien against the steamer 'Norwood,' her tackle, apparel, and furniture, boilers and engines, an order was made by the said superior court appointing a temporary receiver for the said vessel, and whereas

"The said receiver Ed. Payette pursuant to such order has taken possession of the said vessel and whereas the owners of the said vessel are desirous of procuring a release of the said vessel from the said lien and from the said receiver" (R., p. 10).

It will be observed in the foregoing that the proceeding was to all intents and purposes *against the thing*. The receivership was not a receivership to take possession of the property and assets of the defendants, but was limited to the *offending thing*, viz., the steamer "Norwood." The prayer is "to take and hold possession of said vessel." The order of the court to the receiver is "to take immediate possession of said steamer 'Norwood,' " etc. The order of the court discharging the receiver, recites that the proceedings are "against the vessel 'Norwood,' her tackle," etc. The plaintiff is denominated "the lien claimant" and a bond is ordered to be "substituted for said vessel." The bond recites that the plaintiff "claiming a lien against the steamer 'Norwood,' "

etc., and that the owners of said vessel are desirous of procuring a release of said vessel "from the said lien and from the said receivership." Clearly, then, it appears that the offending thing, the steamer "Norwood," was the subject of all the proceedings which were manifestly based upon the lien claimed by the plaintiff. The object and purpose of the bond, as appears from its recitals and from the order of the court discharging the receiver, was to release the vessel from the receiver and such bond was "substituted for any security or claim which the said plaintiff, A. J. West, may have against or in the said vessel" (R., p. 10).

The State Supreme Court considers the appointment of a receiver and the taking possession of the vessel as, in effect, an equitable attachment of the property. They say the bond was like that given in the case of *Johnson vs. Chicago & Pacific Elevator Company*, 119 U. S., 388, wherein this court held that after the bond had been given to release the attachment of the vessel, the suit became one *in personam*, and that the defendants could not afterwards attack the validity of the attachment, citing *Brady vs. Onfroy*, 37 Wash., 482. With all due respect for the learned Supreme Court of the State of Washington we venture to say that the decisions referred to do not warrant its conclusions.

In the case of *Johnson vs. Chicago & Pacific Elevator Company*, *supra*, it appears that by the statute of the State of Illinois a lien was given on all water craft above five tons burthen used in navigating the waters of the State for damages arising from injuries to persons or property by such water craft. The statute of the State provided for the procedure from the commencement of the action to the entry of judgment, issue of execution and sale. It provided for the giving of a bond payable to the owner of the craft to be attached "conditioned that the petitioner shall prosecute his suit with effect or in case of failure therein will pay all costs and damages which the owner or other person interested in such water craft may sustain in consequence of the wrongful suing out of such attachment." Upon the filing of the pe-

tition and bond, a writ of attachment is issued which the sheriff shall execute by taking into his possession the vessel. The owners of the vessel can have it released by giving a bond for double the amount of the claim, the security to be approved by the court, "conditioned that the obligors will pay all moneys adjudged to be due such claimants with cost of suit." Upon receiving the bond the clerk shall issue an order of restitution directing the officer who attached the water craft to deliver the same to the person from whom it was taken; "said water craft shall thenceforth be discharged from all the liens secured by bond or deposit." Upon the trial the judgment shall be rendered against the principals and surety in the bond, "and the subsequent proceedings shall be the same as now provided by law in personal actions in courts of record in this State."

From these provisions it is clear the statute provided a remedy against water craft similar in all its details to the usual statutory proceedings for attachment. The attachment was issued upon the giving of a bond by the petitioner, and was released upon the giving of a bond by the owners. The terms and conditions of these bonds are prescribed by the statute and the effect that follows from giving the bonds is also statutory. Therefore, when Mr. Justice Blatchford says, p. 398:

"From the time of the issuing of the writ of restitution, on the same day the petition was filed, the tug disappears from the proceedings, the bond having taken her place. The judgment was one *in personam* against Johnson and Christy, as required by section 21 of the statute, in a case where the attached vessel has been discharged from custody. That section also provides that the proceedings subsequent to the judgment shall be the same as now provided by law in personal actions in the courts of record in this State."

"So far, therefore, as this suit is concerned, the action, in the shape in which it comes before this court, in a suit *in personam*, with an attachment as security, the attachment being based on a lien given

by the State statute, and a bond having been, by the act of the defendant, substituted for the thing attached,"

he is but stating in another form what the statute of Illinois provides for. (See sections 15, 17, and 21, quoted in the opinion.) In the case of *Washington Iron Works vs. Jensen*, 3 Wash., 584, decided in January, 1892, which was a suit in equity brought under this same statute to enforce a lien upon a domestic vessel for labor and materials used in her construction and equipment, a receiver was appointed to take charge of the vessel. The court held that it had jurisdiction to appoint a receiver under the provisions of subdivision 3 of section 5456 of Ballinger's Code, which provides as follows:

"A receiver may be appointed by the court for the following causes: in all actions where it is shown that the property, funds, or lands or profits in controversy are in danger of being lost, removed, or materially injured."

There is no provision of the Washington statute for releasing property held by a receiver by the giving of a bond. Clearly, then, the bond in this case, given to release the vessel from the receiver, was not a statutory bond, as in the case of *Johnson vs. Chicago & Pacific Elevator Company, supra*. In that case this court adopted the holding of the Supreme Court of Illinois that "as the bond was given with the statute existing, the statute formed part of the bond." The order herein discharging the receiver recites that the owners "having applied to me—for an order discharging the said vessel from said receivership and the plaintiff appearing by his attorney and consenting to the order—it was ordered that the said bond be accepted and security thereof substituted for said vessel, and that the order heretofore made appointing the said receiver be, and the same is hereby, vacated and set aside and the receiver is discharged" (R., 9).

Does this order, or the discharge of the receiver, in any

way affect the statutory lien, if any, that the plaintiff claimed to have on the vessel? The conditions of the bond were that the liability of the principal and sureties should be substituted for any security or claim which the plaintiff might have against the vessel (R., p. 10). The question as to whether or not the plaintiff had a lien upon the "Norwood" was in no way waived, any more than the constitutionality of the statute. If it should appear that the plaintiffs in error do not have a lien, or that the statute was unconstitutional, most assuredly the sureties on the bond could not be held. The State Supreme Court in its first opinion stated the correct rule as follows:

"It is therefore evident that if the court had not jurisdiction of the subject-matter of the cause of action stated in the complaint, viz., the enforcement of a lien against the vessel, it could not by virtue of the recitals in the bond enter judgment against the bondsman whose liability was substituted for that of the vessel on condition that it should be found in said cause that the vessel itself was liable" (R., p. 396).

That the opinion in *Johnson vs. Chicago & Pacific Elevator Company* was limited to the facts of that particular case is apparent from the following language (p. 400):

"Whether proceedings under the Illinois statute, different from those had in this case, may or may not be obnoxious to some of the questions raised, is a question which must be left to be determined when it properly arises."

Contrast the proceedings in the case of *Johnson vs. Chicago & Pacific Elevator Company* with the case at bar. In the first, before the vessel could be attached, a bond must be executed to secure the owners of the vessel for any damages they might suffer by reason of a wrongful attachment. The owners might give a bond under the terms of the statute to release the vessel. In the case at bar a foreign vessel, en-

gaged in interstate commerce, is seized upon the *ex parte* order of the court as she is about to sail without any security whatever to the owners of the vessel, and this at a time when she is loaded with interstate commerce and ready to proceed on her voyage, and without any showing whatever, other than what is alleged in the complaint, that she is loaded with a cargo and ready to proceed on her voyage outside of the jurisdiction of the court. Here is an instrument of interstate commerce immediately and indefinitely tied up with no security for the enormous loss incident to stopping a vessel of the "Norwood's" size and capacity when she is loaded and ready to sail. Under such circumstances what ought to be done? Manifestly, the only rational thing was to substitute the security of the bond in place of that of the steamer.

Assuming that an attachment under the State statute could have issued in a case of this character, the owners of the vessel would at least have had the security of a bond for the damages they would have suffered if the attachment had been wrongfully issued, but in the proceedings adopted they had no security and no recourse, if it should be ultimately held that the plaintiffs were not entitled to a lien and that the seizure was wrongful. The State Supreme Court says that the proceeding in the trial court "was in effect an equitable attachment of the property." We respectfully suggest that an equitable attachment is regulated by the same procedure as an attachment issued in an action at law. In the State of Washington the issuance of an attachment in a suit in equity is recognized, but in such case the statutory requirements as to affidavit and bond must be complied with (*Bingham vs. Keylor*, 19 Wash., 555; 7 Encyc. of P. & P., 789 *et seq.*).

The State Supreme Court also says that "the situation is analogous to that of an attachment at law where a bond for the release of the attached property has been given, conditioned for the payment of the judgment which shall be obtained in the case. The security of the bond becomes sub-

stituted for that of the released property, and any question as to the regularity of the attachment cannot afterwards be raised," citing *Brady vs. Onfroy*, 37 Wash., 482. As we have shown, there is no analogy in the cases. In *Brady vs. Onfroy* the question was upon the effect of a bond given under the statute to procure the release of attached property. The court says (p. 487):

"It was conditioned that the respondent would perform the judgment of the court and under the terms of Ballinger's Code, section 5374, the attachment was thereby discharged."

And again (p. 490):

"Therefore, under our law, a defendant in attachment has the option to first try the question of the regularity of the attachment, or to give the bond. If he elects to give the bond, which under our statute must provide for the performance of the judgment of the court, he thereby gains the advantage of the immediate release of the property and discharge of the attachment. But, in lieu thereof, under the above authorities, the bond stands as security for any judgment that may thereafter be rendered against him in the action, and both he and his surety waiving any right to attack the regularity of the attachment."

It is apparent that, by the express terms of the attachment statute providing for the giving of a bond, it discharges the attachment, and the sureties unconditionally promise to pay the amount of the judgment that may be rendered against the defendant.

There can be no analogy in such a case to the one at bar. If it appears that the trial court did not have jurisdiction of the subject-matter, that the statute does not give a lien, or that the statute is unconstitutional, then, most assuredly, the proceedings were void and there was no consideration for

giving a bond. This is a settled rule in this court, for this court says:

"If there was no authority in law for the attachment, there could none for taking the bond. If the attachment itself is illegal and therefore void, so also must be the bond which takes its place." *Pacific Nat. Bank vs. Mixter*, 124 U. S., 721.

See also

Steele vs. Crider, 61 Fed., 486.

Bank vs. Cook, 51 Pac., 65.

IF THERE WAS NO LIEN THEN THERE WAS NO JURISDICTION
TO RENDER A PERSONAL JUDGMENT.

In a recent decision by the Supreme Court of the State of Washington this was so held in a case involving this identical statute. It was a suit in equity to foreclose a lien claimed under the provisions of section 5954, Ballinger's Code, upon a boat and engine. It was claimed by the defendants that the plaintiff did not have a lien under the circumstances of the case upon either the boat or the engine. The trial court foreclosed the lien on the boat and engine and gave a personal judgment against the defendant. An appeal was taken to the supreme court, which found that the plaintiff was not entitled to a lien upon the boat or engine. The court held that the decision should be reversed, and the case ordered dismissed, saying:

"What, then, becomes of the personal judgment rendered against appellant? This court has heretofore recognized that the foreclosure of a lien of this nature is an ordinary civil action of foreclosure upon the equity side of the court (*Washington Iron Works vs. Jensen*, 3 Wash., 584; 28 Pac., 1019; *Callahan vs. Etna Indemnity Co.*, 33 Wash., 583; 74 Pac., 693) which makes the action substantially of the same character as in the foreclosure of mechanic's liens. In the latter class of actions it has been held by this

court, in common with most others that there can be no personal judgment in such a lien foreclosure for the sum which the court may find due when the right for the lien fails. This is apparently upon the theory that a defendant cannot be compelled to submit to a trial of his personal liability in an action which is in form equitable when the equitable claims made in the action fail. To compel him to so submit would be to take away his right of trial by jury. *Hildebrant vs. Savage*, 4 Wash., 524; 30 Pac., 643; 32 Pac., 109. It is true that in such a foreclosure proceeding the defendant may waive his rights in this respect to such an extent that the court may render a personal judgment against him even though the plaintiff's equitable cause, to wit, the foreclosure of his lien may fail. We do not think that in this cause the defendant has waived his rights in this respect. The theory of his defense, made manifest in this record at various stages of the cause, was that the court had no lawful right to render either a judgment of foreclosure against his engine or a personal judgment against him. The latter contention was made not only upon the merits, but also by reason of the form of the action.

"We are of the opinion that the judgment of foreclosure, and also the personal judgment, must be reversed. The cause is therefore remanded to the superior court, with instructions to dismiss the same, without prejudice, however, as to respondent's right to sue for the value of his service." *Thompson vs. Allen*, 56 Wash., 582.

In the case at bar it appears that the plaintiffs in error demurred to the complaint for lack of jurisdiction; in their answer they expressly stated that they answered "without waiving their demurrer herein and still insisting upon their rights as claimed under such demurrer." At the trial they objected to the introduction of any testimony in support of the complaint for the reasons stated in the demurrer (R., p. 52). It is therefore manifest from the records that appellants did not at any time waive their objections to the

jurisdiction as raised by their demurrer. Moreover, under the express provisions of the statute, such objection could be raised at any time.

"If no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting always the objection that the court has no jurisdiction, or that the complaint does not state facts sufficient to constitute a cause of action, which objection can be made at any stage of the proceedings, either in the superior or supreme court." Sec. 4911, Ball.

In conclusion we respectfully submit:

I.

On the face of the record it appears that the substance and consummation of the injury complained of was consummated on navigable waters and therefore was in the exclusive jurisdiction of the admiralty.

II.

The Washington statute was not intended to, and does not include, within its provisions, injuries to a fixed structure like a bridge.

III.

That the statute does not, and was not intended to give a lien upon a foreign vessel engaged in interstate commerce; that construing the statute to apply to foreign vessels engaged in interstate commerce brings such statute in conflict with the Constitution and laws of the United States, relative to the exclusive jurisdiction of admiralty, and the Federal control and regulation of commerce.

IV.

Assuming that the Washington statute did not give a lien for the injuries complained of upon a foreign vessel engaged in interstate commerce or that such statute is unconstitutional, then the seizure of the "Norwood" was an illegal and void exercise of power on the part of the trial court. The bond given to release her was without consideration and void and the personal judgment attempted to be rendered by the court was illegal and void and is an attempt to take the property of the plaintiffs in error without due process of law.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 33.

JOHN I. MARTIN ET AL., PLAINTIFFS IN ERROR,

vs.

A. J. WEST, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.

BRIEF FOR DEFENDANT IN ERROR.

In the interest of brevity, and to avoid needless repetition, reference is made to the statement of the case contained in defendant's motion to dismiss or affirm, on which action was postponed by the court to await consideration of the case on its merits. It is also believed that the brief for plaintiffs in error on the merits, lately filed, contains a substantially correct and fair recitation of the essential facts, except that it ought to be particularly noted that plaintiffs in error (defendants in the trial court) executed a bond for the release of the vessel after having first entered a general appearance in the action without raising any objection at that time,

or previously, thereby agreeing and binding themselves to "well and truly pay to said A. J. West any judgment or claim which he may establish upon the said cause of action mentioned in his complaint" (R., pp. 9-10; also see order discharging receiver, R., pp. 8-9), and thereafter the cause proceeded as an action *in personam* for damages.

Two general propositions are contended for by plaintiffs in error, to wit:

First. That the State court did not have jurisdiction of the case, but the cause of action was one founded in admiralty, over which the admiralty court of the United States had exclusive jurisdiction; and,

Second. That sections 5953 and 5954 of Ballinger's Codes and Statutes of the State of Washington are not legally applicable to the case in hand, but, if so, then they represent invalid enactments and are void because impinging constitutional or Federal subjects and limitations.

We will address ourselves to these two general propositions.

I.

The trial court found that the injury and damage complained of was caused by the steamer "Norwood," being under her own steam and motive power, while plaintiffs in error were engaged in passing said vessel through the draw of defendant's bridge, and that plaintiffs in error "negligently, carelessly, and through failure to exercise ordinary skill in the handling, management, and navigation of said vessel," ran said vessel against the supporting piers of one of the spans of said bridge, and struck, broke, and injured the piers supporting the said bridge to such an extent that within a few hours thereafter one of the spans collapsed and fell into the waters of the Chehalis river and was broken up and almost wholly destroyed; that the damage done by

plaintiffs in error to defendant was the sum of \$10,511.89; that by reason of the breaking and injury done to said bridge the defendant was deprived of the use of the bridge and the earnings therefrom from May 7, 1906, to October 20, 1906, and that the defendant's loss and damage by reason of being deprived of the use and earnings therefrom for said period was \$3,240 (R., pp. 34, 35). This finding was affirmed by the Supreme Court of the State of Washington in its decision on rehearing (R., pp. 403, 406).

It also appears from the findings of the trial court (R., p. 34) that the bridge so damaged was owned by defendant, and was a steel or combination wood and steel draw-bridge, which, together with its approaches, extended across the Chehalis river from South Aberdeen to Aberdeen proper in Chehalis county, Washington, and that said bridge was used by defendant as a toll bridge for the passage of passengers, street cars, teams, and vehicles, and that the same was a lawful structure in said stream; that the bridge was provided with a large swinging span capable of being opened by revolving the same upon a central pier constructed in the channel of the river, so that when the span was opened it afforded two passage ways, one on each side of said pier, for the passage of steamers and other crafts up and down the said Chehalis river.

We submit that, under the facts appearing, the Supreme Court of the State was correct in its conclusion, on rehearing, that the case is one that was within the jurisdiction of the State court, and that the admiralty court of the United States did not have jurisdiction thereover.

The Savannah, 21 Fed. Cases, No. 12,384.

City of Milwaukee *vs.* Curtis *et al.* (37 Fed., 705), and authorities therein cited.

The John C. Sweeney (55 Fed., 540).

The Poughkeepsie (162 Fed., 494), affirmed, *per curiam*, in 212 U. S., 557.

Hough *vs.* Western Transportation Company (The Plymouth), 3 Wall., 20.

Phoenix Insurance Company (118 U. S., 610).

Johnson *vs.* Chicago & Pacific Elevator Company (119 U. S., 388).

Cleveland Terminal & Valley R. R. Co. *vs.* Cleveland Steamship Company (208 U. S., 316).

Duluth & Superior Bridge Company *vs.* Steamer Troy (208 U. S., 322).

In the case of the John C. Sweeney, *supra*, the cause of action was substantially identical to that in the case at bar, and the relief sought was in admiralty by libel *in rem* by a bridge company against a schooner for damages caused to a bridge across a navigable river by a schooner colliding with the bridge and damaging the same. The district court (Judge Simonton), after considering numerous decisions bearing on the subject, held that the admiralty court was without jurisdiction and dismissed the proceeding.

So in the case of City of Milwaukee *vs.* Curtis and other vessels, *supra*, libel *in rem* was filed in the admiralty court by the City of Milwaukee against the several vessels for injuries caused to a bridge by collision. The libel was dismissed for want of admiralty jurisdiction, and Judge Jenkins, in discussing the question of locality of the damage and its effect in such cases, said:

"In cases of tort locality is the test of the jurisdiction in the admiralty. The ultimate judicial authority has determined the principle that the true meaning of the rule of locality is that, although the origin of the wrong is on water, yet, if the consummation and substance of the injury are on the land, a court of admiralty has not jurisdiction; that the place or locality of the injury is the place or locality of the thing injured, and not of the agent causing the injury. *Ex parte* Phoenix Insurance Company, 118 U. S., 610."

In the case of "The Poughkeepsie" the United States District Court for the Southern District of New York (162

, 494), held that a collision in a navigable river between
 ls and the surface part of borings (the borings being
 posed of wrought-iron pipe from the bottom of the river,
 ounded by a platform on the surface) made to locate
 queduct under the bottom of the river, is not in any
 maritime or within the admiralty jurisdiction. Appeal
 said decision to this court resulted in affirmance, *per*
m, November 30, 1908 (212 U. S., 557).

he case of *Johnson vs. Chicago & Pacific Elevator Com-*
, supra, was in all essential respects similar to the case
 r. It was an action in the State courts of Illinois, under
 tes of that State substantially like those of the State of
 ington. In that case the jib-boom of a vessel towed
 steam tug in the Chicago river at Chicago, collided
 a warehouse on land, near the bank of the river, through
 gence in the management of the tug. A quantity of
 ed corn was stored in the warehouse. In the collision
 jib-boom of the towed schooner crashed through the
 of the warehouse, "*whereby a large quantity of the*
ran out and was lost in the river, causing a damage of
38." (The italics are ours.) There it was urged, as in
 resent case, that the cause of action was a maritime tort
 n exclusive jurisdiction of the admiralty court of the
 ed States, but this contention was rejected by the court,
 Justice Blatchford saying:

"Under the decisions of this court in the *Plymouth*
 and in *Ex parte Phoenix Insurance Company*, at the
 present term, it must be held that the cause of action
 in this case was not a maritime tort of which a dis-
 trict court of the United States, as a court of admi-
 ralty, would have jurisdiction; and that the remedy
 belonged wholly to a court of common law; the sub-
 stance and consummation of the wrong having taken
 place on land and not on navigable water, and the
 cause of action not having been complete on such
 water. This being so, no reason exists why the
 remedy for the wrong should not be pursued in the
 State court, according to the statutory method *pre-*

scribed, even though that law gives a lien on the vessel. The cases in which State statutes have been held void by this court, to the extent in which they authorize suits *in rem* against vessels, because they give to the State courts admiralty jurisdiction, were only cases where the causes of action were cognizable in the admiralty."

In the late cases of *Cleveland Terminal & Valley R. R. Co. vs. Cleveland Steamship Company* (208 U. S., 316), and *Duluth & Superior Bridge Company vs. Steamer Troy* (*Ibid.*, 322), it was specifically declared by this court that no redress is afforded in admiralty for injuries inflicted by vessels colliding with drawbridges, piers, abutments of a railroad bridge spanning a navigable stream, or to shore docks, or wharves, or to pilings placed around center abutments to bridges to protect vessels; and it was on the authority of these two cases that the Supreme Court of the State of Washington reversed itself, on rehearing, and decided the present case for defendant in error. The doctrine of these two cases, and the close and substantial identity between the latter one and the case at bar, would seem to completely foreclose further discussion of the question, and to render unavoidable the conclusion that the cause of action here involved was not within the admiralty jurisdiction of the United States, but was within the jurisdiction of the State courts. We submit that the decisions in all these cases squarely cover the case at bar beyond any attempted differentiation by refinement of expression in argument or technical distinction.

II.

Are sections 5953 and 5954 of Ballinger's Codes and Statutes of the State of Washington, so far as they provide for liens against vessels and the enforcement of such liens, applicable to the case at bar, and are they invalid for conflict with or usurpation of Federal or constitutional limitations?

If it be determined that the cause of action accruing in this case was not a maritime tort subject to the admiralty jurisdiction of the United States, it must, according to our view, at once follow as a logical and necessary sequence of such a conclusion that the State of Washington had the plain right of legislating as it did in the sections referred to, and that said statutes, so far as applicable to this case, are valid.

In this connection we call attention to the fact that, after plaintiffs in error had given their bond, without objection, and obtained release of the vessel, they demurred to the complaint, and after the demurrer had been overruled filed their answer, and thereafter the case proceeded as an ordinary case at law for damages; and we submit that the action of plaintiffs in error, under the circumstances shown, estops them from now asserting any invalidity in those proceedings or the law on which they are founded, and that the cause is one *in personam*, as at law, for damages. Their objections to the scope and validity of the statute in question, so far as they are subject to review here under the writ of error, are, we submit, overwhelmingly opposed by the tenor and effect of numerous decisions, many of which were rendered by this court, and from which it will be our purpose to make liberal quotations in this brief to show clearly how similar contentions have heretofore been met and dealt with by this court.

The Washington statute, so far as here involved, and as found in Ballinger's Code, is as follows:

"SEC. 5953. All steamers, vessels, and boats, their tackle, apparel and furniture, are liable—

* * * * *

"6. For injuries committed by them to persons or property within this State, or while transporting such persons or property to or from this State.

"Demands for these several causes constitute liens upon the steamers, vessels, and boats, and their tackle, apparel, and furniture and have priority in their

order herein enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued.

"SEC. 5954. Such liens may be enforced in all cases of maritime contracts or service by a suit in admiralty *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits, and in all cases of contracts or service not maritime, by a similar action in any district court in this territory."

In the case of *The Roanoke* (189 U. S., 185), this court had occasion to consider certain provisions contained in paragraph 3 of said section 5953, in relation to other matters wholly different from that which was the cause of action in the case at bar, and declared the statute to be unconstitutional only "so far as it attempts to control the administration of the maritime law by creating and superadding conditions for the benefit of a certain class of creditors and thereby depriving the owners of vessels of defenses to which they would have been otherwise entitled."

Obviously this objectionable feature of the statute is entirely different and independent of the provisions of section 6, so far as the same are applicable here, and being plainly severable from subdivision 6, and the controversy in that case being essentially different from that presented in the case at bar, it cannot be said that the decision in the case cited furnishes authority for a contention that the entire statute was declared unconstitutional, or that it is unconstitutional as here involved.

It may be added that the validity of this statute has been recognized by the United States in the District Court for the State of Washington, as well as by the Circuit Court of Appeals for that circuit, subsequent to the decision of this court in the case of *The Roanoke*, *supra* (see *The Energia*, 124 Fed., 840, and *Guffy vs. A. & P. S. S. Co.*, 130 Fed., 278). *And the construction put upon the statute by the State Supreme Court, as to its scope and effect, is conclusive here. (Smiley v. Hanson 196 W. H. 447; Gatewood v. North Carolina, 203 W. H. 532, 541.)*

That the statute is sufficiently broad and comprehensive in its provisions to embrace a case like the present one seems too clear for argument. The plain and simple language of the statute renders all steamers and vessels liable "for injuries committed by them to persons or property within this State, or while transporting such persons or property to or from this State."

That the provisions of State statutes like those here in question are valid and effective when they do not intrench upon the dominion of admiralty is well settled by the decisions of this court. See—

Johnson *vs.* Chicago & Pacific Elevator Company (119 U. S., 388).

Knapp, Stout & Company *vs.* McCaffrey (177 U. S., 638).

Iroquois Transportation Company *vs.* De Laney Forge & Iron Company (205 U. S., 355).

Davis *vs.* Cleveland, C., C. & St. L. R'y (217 U. S., 157).

Berwind White Coal Mining Company *vs.* Metropolitan Steamship Company (Steamers Yale and Harvard) 166 Fed., 782, affirmed in 173 Fed., 471.

See, also, the following decisions to the same effect by State courts:

Olsen *vs.* Birch & Co. (133 Cal., 479).

The Victorian (24 Ore., 121).

Scattered Lumber Co. *vs.* Rike (113 Ala., 559).

Globe Iron Works *vs.* Steamer (100 Mich., 583).

Reynolds *vs.* Nelson (116 Wis., 483).

In the case of Johnson *vs.* Chicago & Pacific Elevator Company, *supra*, the proceedings and the statute on which they were based bear very close similarity to the statute and proceedings in the case at bar. It was there urged that the statute of Illinois providing for a lien on vessels engaged in domestic commerce among the States and duly enrolled and

licensed in conformity with the Revised Statutes of the United States, was invalid, but the court held otherwise. We quote from the opinion in said case, as follows:

"In the present case, the suit is a suit *in personam*. The petition states that the plaintiff 'complains of Jacob Johnson,' 'and makes him defendant herein'; and that the plaintiff has demanded the amount of his damage from the defendant, but that the latter refuses to pay it. The petition prays that the tug may be attached and the defendant be summoned. The writ of attachment recites that the plaintiff has complained that Johnson is indebted to it in \$394.38, for which it claims a lien on the tug. The writ commands the sheriff to attach the tug and to summon Johnson to appear before the court on a day named. Attachment was made of 'all the right, title and interest of Johnson in and to the tug, and at the same time the writ was served upon him by being read to him. The releasing bond executed by Johnson and Christy recites the action as being one for damages alleged to be due the plaintiff from Johnson. From the time of the issuing of the writ of restitution, on the same day the petition was filed, the tug disappears from the proceedings, the bond having taken her place. The judgment was one *in personam* against Johnson and Christy, as required by section 21 of the statute, in a case where the attached vessel has been discharged from custody. That section also provides that the proceedings subsequent to the judgment 'shall be the same as now provided by law in personal actions in the courts of record of this State.'

"So far, therefore, as this suit is concerned, the action, in the shape in which it comes before this court, is a suit *in personam*, with an attachment as security, the attachment being based on a lien given by the State statute, and a bond having been, by the act of the defendant, substituted for the thing attached.

"In *Taylor vs. Carryl*, 20 How., 583, this court upheld the validity of the seizure of a vessel under a process of foreign attachment issuing from a State court of Pennsylvania, in pursuance of a statute of

that State, as against a subsequent attempt to seize her under process in admiralty. In the course of the opinion of the court, delivered by Mr. Justice Campbell, it is said: 'The process of foreign attachment has been for a long time in use in Pennsylvania and its operation is well defined, by statute as well as by judicial precedents. * * * The habit of courts of common law has been to deal with ships as personal property, subject in the main, like other personal property, to municipal authority, and liable to their remedial process of attachment and execution; and the titles to them, or contracts and torts relating to them, are cognizable in those courts.'

"The subsequent case of *Leon vs. Galceran*, 11 Wall., 185; 178 U. S., bk. 20, Law Ed., 74, is very much like the one now before us. There, by a statute of Louisiana, a mariner had a lien or privilege on his vessel for his wages, and he brought a suit *in personam* therefor in a court of the State, and had the vessel sequestered. She was released on a bond given by her owner, and by Leon as surety, for the return of the vessel on final judgment. Judgment being rendered against the owner *in personam*, and the vessel not being returned, the mariner sued the surety, on the bond, in the same court, and had judgment for the amount fixed by the original judgment. On a writ of error from this court, sued out by Leon, it was urged for him, that under the authority of *The Moses Taylor*, and *The Hine vs. Trevor*, the State court had no jurisdiction to enforce the lien by a seizure before judgment. On the other side, it was urged that the suit was a common-law remedy, within the clause in section 9 of the judiciary act of September 24, 1789, 1 Stat. at L., 77 (now embodied in section 711, subdivision 3, of the Revised Statutes), which, after granting to the District Courts of the United States 'exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction,' saves 'to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it.' This court held that the action *in personam* in the State court was a proper one, because it was a common-law remedy, which the common law was

competent to give, although the State law gave a lien on the vessel in the case, similar to a lien under the maritime law, and it was made enforceable by a writ of sequestration in advance, to hold the vessel as a security to respond to a judgment, if recovered against her owner, as a defendant; that the suit was not a proceeding *in rem*, nor was the writ of sequestration; that the bond given on the release of the vessel became the substitute for her; that the common law is as competent as the admiralty to give a remedy in all cases where the suit is *in personam* against the owner of the property; and that these views were not inconsistent with any expressed in *The Moses Taylor*, in *The Hine vs. Trevor*, or in *The Belfast*.

"The case of *Pennywit vs. Eaton*, 15 Wall., 382 (82 U. S., 21:114), is a similar one.

"There being no lien on the tug, by the maritime law, for the injury on land inflicted in this case, the State could create such a lien therefor as it deemed expedient, and could enact reasonable rules for its enforcement, not amounting to a regulation of commerce. Liens under State statutes, enforceable by attachment, in suits *in personam*, are of every-day occurrence, and may even extend to liens on vessels when the proceedings to enforce them do not amount to admiralty proceedings *in rem*, or otherwise conflict with the Constitution of the United States. There is no more valid objection to the attachment proceeding to enforce the lien in a suit *in personam*, by holding the vessel by mesne process to be subjected to execution on the personal judgment when recovered, than there is in subjecting her to seizure on the execution. Both are incidents of a common-law remedy, which a court of common law is competent to give. This disposes of the objection that the vessel being engaged in commerce among the States, and enrolled and licensed therefor, no lien on her could be enforced by attachment in the State court. The proceeding to enforce the lien, in this case, was not such a regulation of commerce among the States as to be invalid, because an interference with the exclusive authority of Congress to regulate such commerce, any more than regulations by a

State of the rates of wharfage for vessels, and of remedies to recover wharfage, not amounting to a duty of tonnage, are such an interference, because the vessels are engaged in interstate commerce."

In said case of *Johnson vs. Chicago & Pacific Elevator Co* the court also observed that:

"The cases in which State statutes have been held void by this court, to the extent in which they authorize suits *in rem* against vessels, because they give to the State courts admiralty jurisdiction, were only cases where the causes of action were cognizable in the admiralty."

The case of *Knapp, Stout & Company vs. McCaffrey, supra*, not only reaffirmed the doctrine that cases of this character were properly within the jurisdiction of State courts, but effectually recognized the competency of the States to enact such lien laws and to provide for their enforcement. We submit that this case, and the authorities therein cited, furnishes ample warrant for sustaining the validity of the statutes of the State of Washington herein attacked.

In *Iroquois Transportation Company vs. De Laney F. & I. Co., supra*, the subject of liens on vessels created by State statutes was again considered and fully discussed by this court. The case came on writ of error to the Supreme Court of Michigan, and the validity of statutes giving liens on vessels engaged in interstate commerce for materials used in the construction of same, was drawn in question, as well as the jurisdiction of State courts over such subjects. The court adhered to its former holding that such State statutes did not infringe the admiralty jurisdiction of the United States, and that the exclusive control over interstate commerce vested in Congress by the Federal Constitution or laws is not infringed by the enforcement against a vessel engaged in interstate commerce of a lien given by a State statute for materials furnished for her construction. It was further

held that the decision of a State court in such matters is not subject to review in the Federal Supreme Court on writ of error to the State court.

We call particular attention to this case because we think the discussion of it by the court quite clearly meets and overcomes several objections urged in the case at bar against the validity of the Washington statute. We also quote the following from said decision:

"It is urged that the attempt to enforce the lien on the vessel was while she was engaged in interstate commerce, and therefore proceedings against her were unlawful and void, in view of the exclusive control of this subject by Congress under the Constitution and laws of the United States. But it must be remembered that concerning contracts not maritime in their nature, the State has authority to make laws and enforce liens, and it is no valid objection that the enforcement of such laws may prevent or obstruct the prosecution of a voyage of an interstate character. The laws of the States enforcing attachment and execution in cases cognizable in State courts have been sustained and upheld. *Johnson vs. Chicago & P. Elevator Company*, 119 U. S., 388-398. The State may pass laws enforcing the rights of its citizens which affect interstate commerce, but fall short of regulating such commerce in the sense in which the Constitution gives exclusive jurisdiction to Congress. *Sherlock vs. Aling*, 93 U. S., 99-103; *Kidd vs. Pearson*, 128 U. S., 1, 23, 32; *Pennsylvania R. Co. vs. Hughes*, 191 U. S., 477.

"Upon the subject, Mr. Justice Brown, speaking for the court in *Knapp, S. & Co. vs. McCaffrey*, 177 U. S., 638-642, said:

"That wherever any lien is given by a State statute for a cause of action cognizable in admiralty, either *in rem* or *in personam*, proceedings *in rem* to enforce such lien are within the exclusive jurisdiction of the admiralty courts.'

"But the converse of this proposition is equally true, that if a lien upon a vessel be created for a claim over which a court of admiralty has no juris-

diction in any form, such lien may be enforced in the courts of the State. Thus, as the admiralty jurisdiction does not extend to a contract for building a vessel, or to work done or to materials furnished in its construction (*People's Ferry Co. vs. Beers*, 20 How., 393; 15 L. Ed., 961; *Roach vs. Chapman*, 22 How., 129; 16 L. Ed., 294), we held in *Edwards vs. Elliott*, 21 Wall., 532; 22 L. Ed., 487, that in respect to such contracts it was competent for the States to enact such laws as their legislatures might deem just and expedient, and to provide for their enforcement *in rem*.

"The contract in this case being for the construction of a vessel, and its enforcement within the power and jurisdiction of the State courts, we do not think that execution of such a decree can be avoided because the vessel engaged in interstate commerce."

The case of *Davis vs. Cleveland, C., C. & St. L. Ry. Co.*, *supra*, sustained the validity of a State statute as applied to lien on cars owned by a foreign railway which had temporarily come into the State in the course of interstate transportation, through the agency of other carriers, and held that such cars are subject to attachment despite the provisions of the Interstate Commerce Act and of United States Revised Statutes 5258, securing continuity of transportation. The doctrine of this case also, we submit, meets and overcomes, both by analogy and principle, the objections urged by counsel for plaintiffs in error to the Washington statutes here involved.

In disposing of the case the court indulged the following reasoning which we think is also pertinent in answer to the various contentions urged by plaintiffs in error here, viz:

"It is very certain that when Congress enacted the interstate commerce law it did not intend to abrogate the attachment laws of the States. It is very certain that there is no conscious purpose in the laws of the States to regulate, directly or indirectly, interstate commerce. We may put out of the case, therefore, as an element, an attempt of the State to

exercise control over interstate commerce in excess of its power. Indeed, the questions in this case might arise upon process issued out of the circuit court of the United States under the Federal statutes. For by Secs. 915 and 916 of the Revised Statutes (U. S. Comp. Stat., 1901, p. 684), remedies 'by attachment or other process,' before judgment, and, 'by execution or otherwise,' after judgment, are given litigants in common-law causes in the circuit and district courts of the United States.

"The questions in the case, therefore, depend for their solution upon the interpretation of Federal laws. Are the laws of the States for the enforcement of debts (laws which we need not stop to vindicate as necessary foundations of credit, and because they give support to commerce, State and interstate) and the Federal laws which permit or enjoin continuity of transportation, so far incompatible that the provisions of the latter must be construed as displacing the former? We do not think so. Section 5258 of the Revised Statutes is permissive, not imperative. It removed the 'trammels interposed by State enactments or by existing laws of Congress' to the powers of railroad companies to make continuous lines of transportation. *Dubuque & S. C. R. Co. vs. Richmond*, 19 Wall., 584, 589; 22 L. Ed., 173, 176. The Interstate Commerce Act, however, has a different character. It restricts the powers of the railroads. It regulates interstate railroads and makes it lawful for them, by any 'means and devices,' to prevent 'the carriage of freight from being continuous from the place of shipment to the place of destination.'

"The interstate commerce law, therefore, is directed against the acts of railroad companies which may prevent continuity of transportation. Section 5258 of the Revised Statutes was directed against the trammels of State enactments then existing or which might be attempted. In neither can there be discerned a purpose to relieve the railroads from any obligations to their creditors, or take from their creditors any remedial process provided by the laws of the State, and, as we have seen, provided by Federal law as well. May it be said that such result follows from the use of property in the public service? A

number of cases may be cited against such contention. We have already pointed out what might be contended as its possible if not probable consequences. In a recent case in this court, a lien imposed under the laws of Michigan upon a vessel to be used in domestic and foreign trade was sustained. To the contention that the enforcement of the lien while the vessel was engaged in interstate commerce was unlawful and void, in view of the exclusive control of Congress over the subject, we answered: 'But it must be remembered that concerning contracts not maritime in their nature, the State has authority to make laws and enforce liens, and it is no valid objection that the enforcement of such laws may prevent or obstruct the prosecution of a voyage of an interstate character. The laws of the States enforcing attachment and execution in cases cognizable in State courts have been sustained and upheld. *Johnson vs. Chicago & P. Elevator Co.*, 119 U. S., 388-398. The State may pass laws enforcing the rights of its citizens which affect interstate commerce but fall short of regulating such commerce in the sense in which the Constitution gives exclusive jurisdiction to Congress.'

In the case of *Berwind White Coal Mining Company vs. Metropolitan S. S. Co.*, 173 Fed., 471, 475, the Circuit Court of Appeals observed that the reason for the objection to State statutes, where they provide for the enforcement of liens that are subjects of admiralty jurisdiction of the United States, is solely because of the exclusive gift to the Federal courts of judicial power in "all cases of admiralty and maritime jurisdiction"; that where this exclusive Federal jurisdiction exists it necessarily ousts the jurisdiction which would have otherwise been enjoyed by the State Courts, and that where exclusive jurisdiction does not exist in the Federal courts it may exist in the courts of a State, where the liens provided for may be effectually enforced.

In the decision of said case of *Berwind White Coal Mining Company vs. Metropolitan Steamship Company* by the Dis-

trict Court (166 Fed., 782), an objection to the validity of a statute of the State of New Jersey providing for liens, so far as applied to foreign vessels, was overruled, the court saying:

"We perceive no question of the power of the legislature of New Jersey to regulate the title of property brought within its jurisdiction, and as an incident thereto to impose a lien which will attach with the same effect as though an expressly agreed lien had been established by the parties involved. The authority of legislatures over personal assets which have a locality elsewhere than at the domicile of the owner is effectively illustrated by the late doctrine of the Supreme Court asserting the power of local taxation with reference thereto, even under exceptional circumstances with reference to vessels engaged in interstate commerce. *New Orleans vs. Stempel*, 175 U. S., 309; *Old Dominion Steamship Co. vs. Virginia*, 198 U. S., 299; *Union Refrigerator Company vs. Kentucky*, 199 U. S., 194; *Ayer & Lord Company vs. Kentucky*, 202 U. S., 409. It is also illustrated with reference to liens for boomage charges regardless of the domicile of the owners of logs, as shown in *Lindsey Company vs. Mullens*, 176 U. S., 126, and elsewhere. It is also very effectively illustrated in the class of cases of which *Green vs. Van Buskirk*, 7 Wall., 139, is one, where a security on movable property like iron safes, obtained at the domicile of the parties, in accordance with the laws of that domicile where the property had its *locus* is imperiled by the removal of the property to another State, where particular forms of given security are required by statute. The general rule applicable here is stated in *Walworth vs. Harris*, 129 U. S., 355, 364, by a citation as follows:

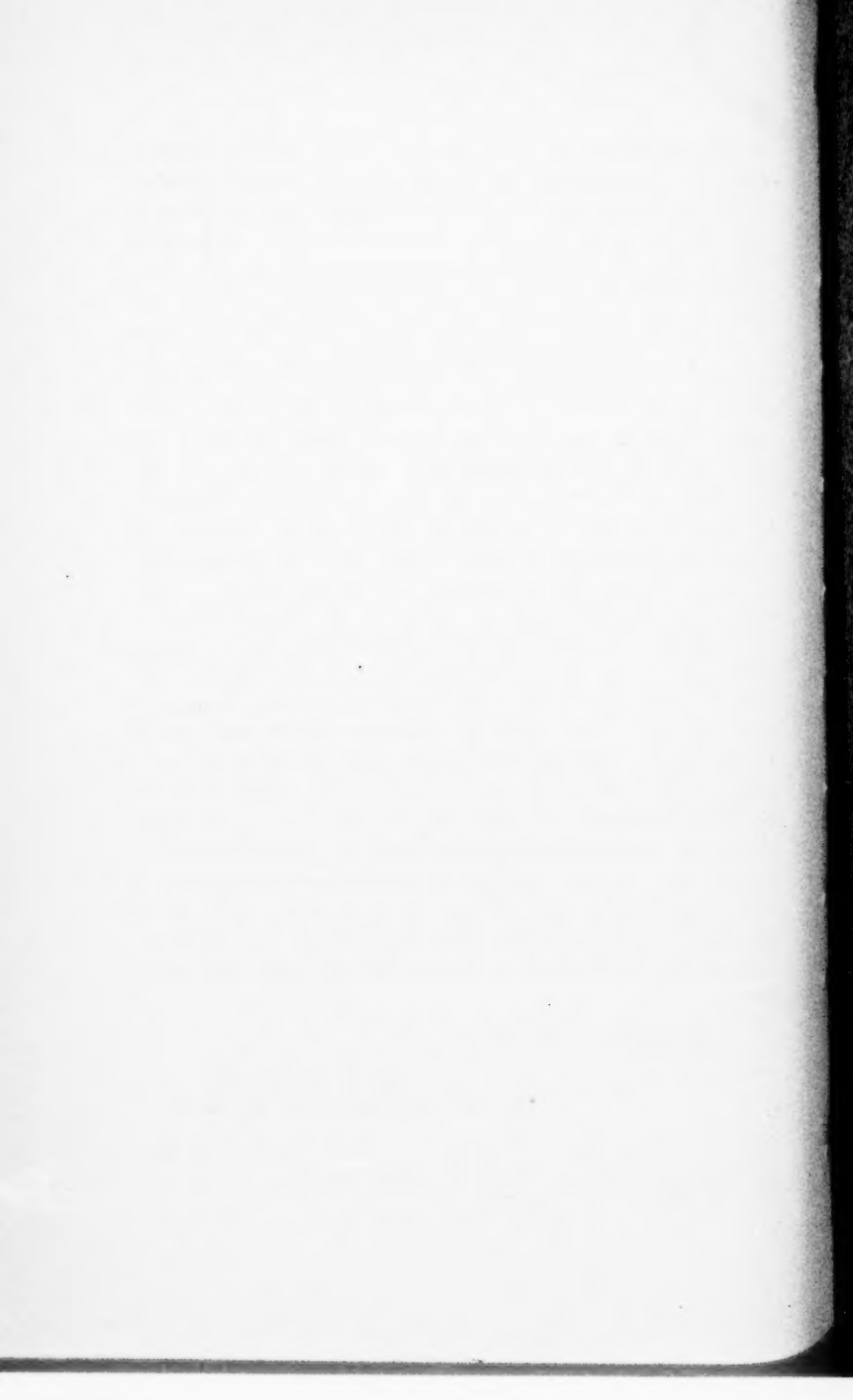
"If a person sends his property within a jurisdiction different from that where he resides, he impliedly submits it to the rules and regulations enforced in the country where he places it."

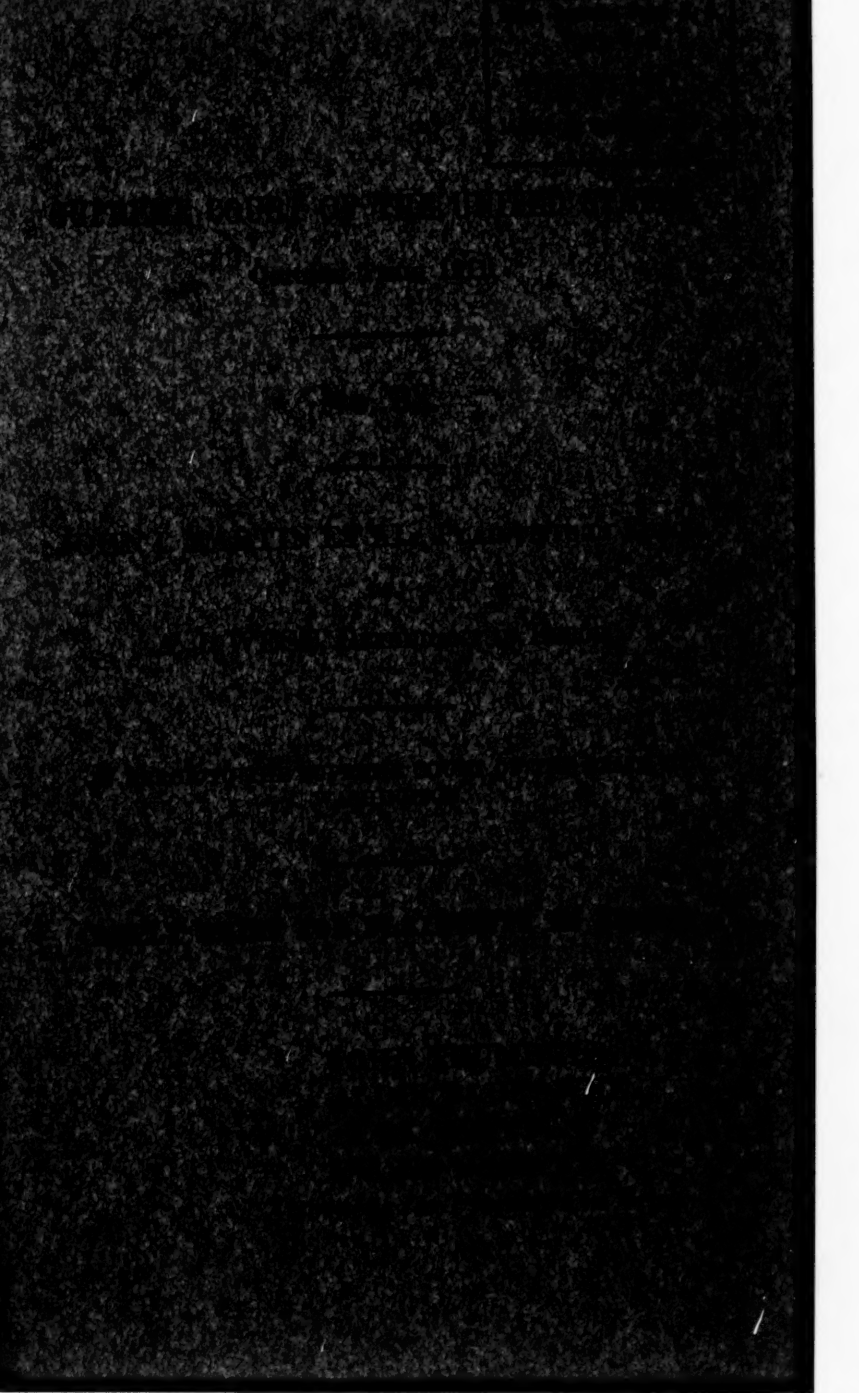
Now, in conclusion, we respectfully submit that in the light of the decisions herein cited and quoted from, and of

the principles for which they stand, it conclusively appears that the cause of action in the present case was not one over which admiralty courts of the United States had jurisdiction, and that the judgment of the Supreme Court of the State of Washington was therefore valid and proper; that the provisions of the State statute contained in sections 5953 and 5954 of Ballinger's Code of the State of Washington, as here involved, are perfectly valid enactments, and do not encroach upon any Federal or constitutional right or privilege of plaintiffs in error, or of any Federal restriction or limitation applicable to this case, and that therefore the judgment below should be affirmed, if the writ of error to the Supreme Court of the State of Washington is not dismissed for lack of jurisdiction in this court. We do not see how the numerous contentions urged in the late brief for plaintiffs in error, elaborate and ingenious as it is, can avoid or overcome the necessary force and effect of the decisions of this court we have cited, and hence we do not perceive any reason or necessity for our protracting our brief by further discussion. We would add that in addition to the authorities cited by us in our motion to dismiss or affirm, the case of *Leonard vs. Vicksburg, Shreveport & Pacific Railroad Company* (198 U. S., 416), furnishes abundant warrant for the granting at least of the motion to affirm herein. In that case a writ of error to the Supreme Court of Louisiana was dismissed, and the court held that a Federal question may have been so explicitly foreclosed by prior decisions as to afford no basis for a writ of error from this court to a State court, and we think that that conclusion has pertinent application here.

Respectfully submitted,

W. C. KEEGIN,
Counsel for Defendant in Error.





SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 33.

JOHN I. MARTIN ET AL., PLAINTIFFS IN ERROR,

vs.

A. J. WEST, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.

REPLY BRIEF FOR PLAINTIFFS IN ERROR.

I.

Counsel for defendant in error, in his brief, at pages 1 and 2, states—

“That it ought to be particularly noted that plaintiffs in error (defendants in the trial court) executed a bond for the release of the vessel after having first entered a general appearance in the action, without raising any objection at that time or previously, thereby agreeing and binding them-

selves to 'well and truly pay to the said A. J. West any judgment or claim which he may establish upon the said cause of action mentioned in the complaint,' and thereafter the cause proceeded as an action *in personam* for damages."

This statement is misleading for several reasons, first, in regard to the bond. It is true a bond was executed, but the purpose and effect of the bond is not as claimed by the learned counsel. When the action was commenced by filing the complaint, upon the *ex parte* application of the defendant in error, the court made an order appointing a receiver to take charge of the vessel (R., pp. 5, 6). The receiver immediately qualified and took possession of the vessel. The vessel was loaded and ready to sail. In this situation the plaintiffs in error applied to the court to have the receiver discharged and the bond substituted for *any claim or lien* that the plaintiff (defendant in error) might have in the vessel. Upon this application the court, with the consent of the plaintiff (defendant in error), made the following order (R., p. 9):

"Now, therefore, in consideration of the premises and on motion of J. C. Cross, attorney for the said owners, *it is ordered that said bond be accepted and the security thereof substituted for said vessel* and that the order heretofore made appointing the said receiver be and the same is hereby vacated and set aside and the receiver is discharged.

"Done in open court this the 10th day of May, 1906" (R., p. 9).

The plaintiffs in error thereupon executed the bond referred to, and while it is true that the bond contains the clause quoted by the defendant in error, it is also true that it contains other conditions which modify and limit the said clause. The conditions of the bond are as follows:

“The conditions of this obligation are such that whereas upon the complaint of the said A. J. West, *claiming a lien against the steamer Norwood, her tackle, apparel, and furniture, boilers, and engines*, an order was made by the said Superior Court appointing a temporary receiver for the said vessel, and whereas,

“The said receiver, Ed Payette, pursuant to such order, has taken possession of the said vessel, and whereas the owners of the said vessel are desirous of procuring a release of the said vessel from the said lien and from the said receiver.

“Now, therefore, if the said bounden principals shall well and truly pay to the said A. J. West any judgment or claim which *he may establish upon the said cause of action mentioned in his complaint herein*, and shall well and truly discharge and perform any judgment or order which the said court may make in said cause, and shall well and truly abide by and perform any order or judgment which the said court may make or render in this cause in favor of the said plaintiff, A. J. West, then this obligation to be void, otherwise to be in full force and effect.

“*It being one of the conditions of this obligation that the personal liability of the principals and surety herein shall be and be-*

come and is substituted for any security or claim which the said plaintiff, A. J. West, may have against or in the said vessel, steamer Norwood, aforesaid, her tackle, apparel, furniture, engines, boilers, etc." (R., 10).

It is manifest from the foregoing, and indeed from all the proceedings, that the object and purpose of the bond was to release the vessel from the hands of the receiver who had been ordered to seize it on the alleged ground that the defendant in error claimed a lien upon it. The bond was substituted for any security or claim which the plaintiff, A. J. West, may have against or in the vessel by reason of the said claim of lien, and for no other purpose. If it should appear that he had no claim or lien in the vessel, there can be no doubt but what the sureties would be released. Counsel for the defendant in error insist that the giving of this bond had the effect of transforming what was a suit in equity for the foreclosure of a lien and other equitable relief, into an action *in personam* for damages, with the bond as security for any judgment that might be rendered, whether or not the court should finally determine that the defendant in error was entitled to a lien upon the vessel. Such is not the law. The only authority by which counsel attempts to sustain such a contention is the case of *Johnson vs. Chicago and Pacific Elevator Company*, 119 U. S., 388. We refer to that case in our initial brief, on page 60 *et seq.*, and analyze the

grounds upon which the decision proceeded so far as this point is concerned. We will add this to what we have there said, that while in these proceedings the lien claimed is attempted to be based upon subdivision 6 of section 5953 of Ballinger's Code, and therefore the lien, if any, would be a statutory lien, the defendant in error did not see fit to adopt the statutory remedy for enforcing such liens provided in section 5954 of the statute, but had a receiver appointed to take charge of the vessel upon an *ex parte* application. In the case of *Johnson vs. Chicago and Pacific Elevator Company, supra*, it appears that under the statutes of Illinois the action was one *in personam*, with the attachment as security. Like the ordinary attachment suit, and with no equitable features whatever, the proceedings from beginning to end are regulated by statute. Before the attachment issues a bond is given for the security of the defendant, in case the attachment is wrongfully issued. The effect of rebonding the property by the defendant is prescribed by statute. Upon giving said bond "said water craft shall thenceforth be discharged from all the liens * * *." And if judgment is in favor of the petitioner, "the subsequent proceedings shall be the same as now provided by law in personal actions in the courts of record in this State" (pages 391-5). The attachment statutes of the State of Washington are substantially the same as those of the State of Illinois, referred to above. (See Appendix.)

In the case at bar a foreign vessel of about eight hundred tons burden, loaded with cargo, as she is about to sail, is seized by the court, and her voyage indefinitely postponed. There is no security given, by bond or otherwise, to protect the owners of the vessel if the seizure should be wrongful. There is no means provided by the law whereby the owners can release their property. Under the procedure adopted by the court to enforce the alleged lien, there is no provision of law providing for a release of the vessel by giving a bond. It is simply a matter of grace or discretion with the judge of the court and the plaintiff whether or not they will accept a bond in lieu of the vessel and allow it to proceed on the voyage. Such a proceeding cannot be due process of law. In the Chicago Elevator case, *supra*, the bond given was a *statutory bond*, and, as said by this court (page 401), "as the bond was given with the statute existing, the statute formed part of the bond," and as the statute provided that a personal judgment should be rendered against the defendant and sureties if the plaintiff should prevail, there was no error in rendering a personal judgment. But the bond given in the case at bar is *not a statutory bond*. There is no statute providing for the giving of a bond in such cases, or what the conditions of such bond shall be, or what will be the legal effect of giving the bond.

The Status of the Suit After the Giving of the Bond.

That the giving of this bond did not effect a change in this case from a suit in equity to an action *in personam* we think is clear on principle and authority. That it was not so intended appears clearly from the record. The condition of the bond, as we have pointed out, was that it was substituted for any claim or security which the defendant in error may have in or against the vessel. On the 13th of October, 1906, the attorneys for the plaintiff in error served upon the defendant in error and his attorney the following notice, which conclusively shows that they were not waiving the fact that this was a suit in equity and consenting to it being tried as an action *in personam* at law:

“You and each of you will please take notice that the defendants in said action, John I. Martin, *et al.*, have and by these presents do make and enter their objection and protest against submitting the said cause, or any matter pertaining thereto, to a jury.

“That subject to their objections heretofore made to the jurisdiction of the court *the said defendants insist that whatever of hearing or trial he had in said cause shall be by and before the court as a court of equity*, and that all of the issues in said cause, both of law and of fact, shall be tried by such court” (Record, p. 26).

On pages 66 and 67 of our initial brief we call the attention of the court to a late decision of the

Supreme Court of the State of Washington wherein they hold, in a suit to foreclose a lien against a vessel under this same statute, that where the lien fails a personal judgment cannot be rendered against the defendants. One of the reasons given is that it takes away the defendant's right to a trial by jury. It is also stated that the law and practice in that regard are the same as in the foreclosure of mechanics' liens. We wish, in addition to what we have said in our initial brief, to call the attention of the court to several decisions of the Supreme Court of the State of Washington, that foreclosure of liens was always on the equity side of the court, and that upon a failure to establish a lien no personal judgment could be rendered, but the action must be dismissed. In an early case, for the foreclosure of a mechanics' lien, the lien failed and the trial court rendered a personal judgment against the defendant. On appeal, the appellant contended, among other things, that he was entitled to a trial by jury, to ascertain the sum, if any, which was owing, the amount claimed being disputed. The Supreme Court says, "*There is nothing in the case of which equity could take cognizance and appellant's points are well taken.*" The case is reversed, and remanded to the court below with instructions to dismiss the suit, without prejudice, however, to an action at law to recover the amount claimed." *Shettler vs. Bath Co.*, 2 Wash. State, 457; 27 Pac. Rep., 76. (Italics ours.)

In another case, for the foreclosure of a mechanics' lien, the lower court found the lien to be invalid, but rendered a personal judgment against the defendant for the amount it found to be due on the contract. The appellant alleged this as error. The Supreme Court says:

*"We are of the opinion that our statutes do not authorize a personal judgment in an action to foreclose a mechanics' lien where the lien fails. The authorities are all to the effect that such a judgment cannot be rendered unless specially authorized by the statute; in fact, the authority to render a personal judgment at law must depend upon the statute. * * * So, if no lien ever existed, then no judgment can be rendered against the owner as the proceeding, being statutory, it can only be resorted to in a case falling within the statute, that is, where a mechanic's lien exists."*

Hildebrandt vs. Savage, 4 Wash., 524; 30 Pac. Rep., 643.

While these decisions relate to mechanics' liens, nevertheless the Supreme Court of the State of Washington has declared that foreclosures of liens on vessels under the provisions of section 5954, Ballinger's Code, are substantially of the same character as the foreclosure of mechanics' liens. See *Thompson vs. Allan*, 56 Wash., 582 (cited on page 66 of our initial brief). It is no doubt true that the trial court—at least as far as the findings or judgment are concerned—proceeded *in personam*. There is not a finding or conclusion wherein the

court finds or concludes that the defendant in error ever had a lien upon this vessel, although the allegation in the complaint of a lien was denied in the answer and the right to a lien was specifically attacked in the second affirmative defense in the answer (R., p. 24), which answer was filed long after the giving of said bond, said affirmative defense being denied by the reply (R., p. 28). It therefore appears that by the issues raised on the pleadings, which were made long after the giving of the bond, that the question as to the right to a lien under sections 5953 and 5954 of Ballinger's Code was specifically raised before the court for determination, and the only finding touching these issues made by the court is Finding No. 5 (R., p. 35), as follows:

“That the plaintiff's total damage by reason of said defendant's wrongful acts amounted to the sum of \$13,751.89 for which damage and loss the plaintiff claimed and asserted a lien upon the said steamer ‘Norwood,’ her boilers, engines, tackle, apparel and furniture and caused said vessel to be seized thereunder but that said vessel after seizure was upon the application of said defendants, released upon a bond given herein and the security of said bond was substituted for the said vessel.”

The judgment entered upon such findings is the ordinary personal judgment on a money demand. No decree adjudging or decreeing that the plaintiff had a lien on the vessel was passed. We submit that under the decisions of the Supreme Court of

the State of Washington the trial court had no power or authority to enter a personal judgment, and that such proceedings are not due process of law.

II.

The insistence of counsel (p. 9) that the case at bar is in fact and law analogous with the cases there cited rests upon an erroneous foundation. In all the cases thus cited the property was *attached* under express statute providing for security from the plaintiff to indemnify the defendant for all damage arising from failure to support the attachment in the suit. Such is the substantial requirement in all such statutes. The attachment law of Washington so provides as will appear from the print thereof annexed to this brief. It is a basic element of all such statutes that if the attachment turns out to have been wrongful the defendant may sue for his resulting damage. In the case at bar no such security was offered or required. The Supreme Court of Washington treats what was done as "in effect an equitable attachment of the property." But *equitable* liens arise out of matters *ex contractu* and not *ex delicto* (*Pomeroy's Equity Jurisprudence*, 3d ed., vol. 1, secs. 167, 178; vol. 3, secs. 1233-1269). Now if the statute of Washington on which this suit is wholly founded does apply hereto, then it is clearly open to the objection that it denies to these plaintiffs in error the equal protection of the laws because in all other

cases *ex delicto* defendants' property can be reached and held *pendente lite*, only through compliance with the attachment statute of the State. Nor as to them is it due process of law. For plainly all other property must be reached and held only on giving prior security to answer in damages if the detention (attachment) be found wrongful, while here no such security is offered; the vessel is seized and held indefinitely, although it may, upon trial, turn out that the plaintiff's demand is without basis and accordingly fails. The law must operate on all alike. Indemnity against resulting damage cannot be secured to one class and denied to another class. If the injury to this bridge had accrued through a land vehicle, attachment of property as security for the damage inflicted could be obtained only through the attachment laws of the State and with the antecedent bond. Because the injury was alleged to have been inflicted by a vessel cannot justify such radical change in procedure whereby the defendant owner's property (*i. e.*, vessel) is seized without such security and withheld to satisfy possible judgment for the same character of wrong. And this leads to the further conclusion that the court below in its second decision erred in holding paragraph six of the State law of Washington (Main Brief, p. 26) applicable to the case disclosed by the record. That section declares a lien upon vessels

“For injuries committed by *them* to persons or property within this State, or while transporting *such* persons or property to or from this State.”

In holding this provision applicable here, the court below plainly eliminates the word “such” from the statute. Otherwise the statute could not here apply. In so doing it in consequence holds that this foreign vessel may be seized and held for a tort which it has not committed, in the words of the statute “while transporting such persons or property to or from this State.” Where such plain misconstruction of the statute appears this court may apply its own construction precisely as was done in *Scott vs. McNeal*, 154 U. S., 34, quoted in our main brief on page 29. If, under the attachment law of the State, the vessel may be held to respond for the wrong committed by these defendants, that statute was not invoked nor its procedure followed. *Contra*, the discretion of a court was invoked, the vessel seized without security and released only upon a bond accepted by the judge in his discretion. Had he refused to accept a bond the vessel would still be “laying by the walls” awaiting the final result of the litigation. In other words, we were given here by *grace* what under the attachment laws of the State is accorded to a defendant as a matter of right, whose property is taken thereunder for a similar wrong.

Counsel cite the cases of the “*Winnebago*,” 205 U. S., 355, and *Davis vs. C. C. & St. L. Ry. Co.*, 217

U. S., 157. But the statement in the latter case is that (page 159) :

“The cars in question when attached were not engaged in interstate commerce. They were, with one exception, standing ‘empty and idle’ upon the tracks of the garnishees; they had reached their destination and had been unloaded.”

On these facts this court held the attachment (which had been sued out in the ordinary way under the attachment statute of the State) operating upon property thus “empty and idle” was not interfering with interstate commerce. Yet the court was careful to say in concluding its opinion (page 179) :

“However, the pending case does not call for a very comprehensive decision on the subject. *We only decide* that the cars situated as this record tends to show that they were when attached, and the amounts due from the garnishee companies to the C. C. & St. L. Ry. Co., were not exempt from process under the State laws and that the court had, therefore, jurisdiction of them, and through them or the C. C. & St. L. Ry. Co.” (Italics ours.)

In *Wall vs. Norfolk & Western Ry. Co.*, 52 W. Va., 485, the court held that a car belonging to a foreign carrier, loaded with interstate shipment in actual transit, could not be so attached under the law of that State, because directly operating as an

interference with interstate commerce. The point is therein fully discussed.

If the procedure here followed can be sustained, serious interference with interstate and foreign commerce can readily result. If the statute of Washington can be here applied, and in the manner here followed, every State may do the same, and with serious results.

An alleged tort can tie up the sailing of a great ocean liner, filled with passengers and freight. The discretion of the court can indefinitely prolong the delay, because if the statute does not provide first for indemnity against the seizure if found wrongful, and second, accord in express terms the right to substitute a bond, commerce within the sole control of the National Government is at once hampered by State enactment, which puts the whole business in the discretion of the State courts. Should that power be so lodged and in such indefinite manner? We submit not. We do not here amplify the argument, because the discussion thereof on our initial brief, pages 50-55, is quite full. We may pertinently add, however, that if the State statute can be upheld in *this* case, it would equally apply to a vessel sailing under a foreign flag, whose master (far distant from home) would find his vessel seized without security, and he in turn compelled to find releasing bond. His obligations under the accepted maritime law of the nations he would understand and would be required to meet. But to protect his vessel from an alleged

tort under State law he would not be prepared. Hence on such seizure he would stand in grave peril of having his voyage indefinitely delayed with serious resulting loss. That would as clearly create hindrance to foreign commerce by the result of the State law as if the statute had in terms sought to regulate such commerce. The law must be tested by its results, not by its language only. It has been well said that—

“The constitutional validity of a law is to be tested not by what has been done under it, but what may by its authority be done.”

Stewart vs. Palmer, 74 N. Y., 183, 188.

This language was quoted and ^{approved} ~~appeared~~ in *Montana Company vs. St. Louis M. & M. Co.*, 152 U. S., 160, 169, 170.

Respectfully submitted,

JOHN TRUMBULL,
ALDIS B. BROWNE,
ALEXANDER BRITTON,
EVANS BROWNE,
Attorneys for Plaintiffs in Error.

APPENDIX.

BALLINGER'S CODE, STATE OF WASHINGTON.

TITLE XXX, CHAPTER I, "OF ATTACHMENTS."

SEC. 5350. ATTACHMENT, WHEN GRANTED.

The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, attached in the manner hereinafter prescribed, as security for the satisfaction of such judgment as he may recover.

SEC. 5355. BOND FOR ATTACHMENT.

Before the writ of attachment shall issue, the plaintiff, or some one in his behalf, shall execute and file with the clerk a bond or undertaking, with two or more sureties, in a sum in no case less than three hundred dollars in the superior court, nor less than fifty dollars in a justice's court, and double the amount for which plaintiff demands judgment, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively, or maliciously sued out. With said bond or undertaking, there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified, and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities and property exempt from execution. No person not qualified to become bail upon arrest shall be qualified to become surety upon a bond or undertaking for an attachment.

SEC. 5357. ACTION ON BOND, DAMAGES.

In an action on such bond, the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained and reasonable attorney's fees to be fixed by the court; and if it be shown that such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond.

SEC. 5358. CONTENTS OF WRIT—LEVY.

The writ of attachment shall be directed to the sheriff of any county in which property of the defendant may be, and shall require him to attach and safely keep the property of such defendant within his county, to the requisite amount, which shall be stated in conformity with the affidavit. The sheriff shall in all cases attach the amount of property directed, if sufficient not exempt from execution be found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable, and he shall, as nearly as the circumstances of the case will permit, levy upon property fifty per cent greater in valuation than the amount which the plaintiff in his affidavit claims to be due. When property is seized on attachment, the court may allow to the officer having charge thereof such compensation for his trouble and expenses in keeping the same as shall be reasonable and just.

SEC. 5374. DISCHARGE OF ATTACHMENT ON COUNTER-BOND.

If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be

discharged and restitution made of the property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action.

SEC. 5375. JUDGMENT ON BOND.

Such bond shall be part of the record, and if judgment go against the defendant, the same shall be entered against him and sureties.

[14001]

EXTRACTS FROM TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 33

**CAPTAIN JOHN L. MARTIN, SUDDEN & CHRISTENSON,
CHARLES E. SUDDEN, E. A. CHRISTENSON, ROBERT
SUDDEN, AND JOHN H. SUDDEN, PLAINTIFFS IN
ERROR,**

A. J. WEST.

**IN ERROR TO THE SUPREME COURT OF THE STATE OF WASH-
INGTON.**

RECORDED FILED APRIL 15, 1909.

(21,601.)

(21,601.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 418.

CAPTAIN JOHN I. MARTIN, SUDDEN & CHRISTENSON,
CHARLES E. SUDDEN, E. A. CHRISTENSON, ROBERT
SUDDEN, AND JOHN H. SUDDEN, PLAINTIFFS IN
ERROR,

vs.

A. J. WEST.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASH-
INGTON.

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(Record, page 3.)

In the Superior Court, State of Washington, for Chehalis County,

A. J. WEST, Plaintiff,

vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christensen, Ed. Hulbert, John Doe Sudden, John Doe, and Richard Roe, Defendants.

Complaint.

The plaintiff in the above entitled action complains of the defendants and for a cause of action alleges:

I.

That the steamer Norwood is an enrolled vessel of about 350 tons burden and is now situated, lying and being at the wharf of the Aberdeen Lumber & Shingle Co. at Aberdeen, in Chehalis County, Washington, and within the jurisdiction of this honorable court; that the defendants Sudden & Christensen, Charles E. Sudden, E. A. Christenson, Captain Martin, Ed. Hulbert, John Doe Sudden (Christian name unknown), John Doe and Richard Roe (the true names of said last two defendants being unknown to the plaintiff) are the owners of the said steamer Norwood and that the defendant, Sudden & Christenson, is the managing owner of said steamer Norwood and was such managing owner at the times hereinafter mentioned that the defendant Captain Martin is and was during the times herein mentioned, the master of said steamer Norwood and has said steamer Norwood in his possession and under his control at Aberdeen, Washington, as aforesaid.

II.

That on the 7th day of May, 1906, the plaintiff herein was the owner of a certain steel or combination steel and wood, draw bridge together with the approaches belonging to the same, said bridge extending across the Chehalis river from South Aberdeen to Aberdeen proper in Chehalis County, Washington, said bridge being used by the plaintiff as a toll bridge for the passage of passengers, street cars, teams and vehicles, from whom and from which tolls were collected by the plaintiff; that said bridge had been erected and was maintained and operated by the plaintiff at said point for some months prior to said date and that the erection of said bridge was affirmatively authorized by the Honorable Secretary of War of the United States and the same constituted and was a lawful structure in said stream; that said draw bridge was provided with a large swinging span capable of being opened by revolving the same upon a central pier or piers constructed in the channel of said river so

that when said bridge was open it afforded two passage ways of about 125 feet each on each of said central pier- for the passage of vessels, steamers and other crafts up and down the said Chehalis river; that said bridge was of great value and was the source of a revenue to the plaintiff amounting to from \$800.00 to \$1000.00 per month.

III.

That on the said 7th day of May, 1906, the defendants were engaged in operating the said steamer Norwood, together with her boiler, engines, tackle, apparel and furniture in the vicinity of the plaintiff's said bridge, said steamer Norwood being under her own steam and motive power and being in the possession of and under the control and command of the defendant Martin and that on said date while the defendants were engaged in passing their vessel through the draw of said bridge the defendants negligently, carelessly and through failure to exercise ordinary skill in the handling management and navigation of said vessel ran said vessel against the supporting piers of one of the spans of plaintiff's said bridge and thereby through the carelessness and negligence of the defendants, struck, broke and injured the piers supporting the plaintiff's said bridge to such an extent that within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the said Chehalis river and was broken up and almost utterly destroyed.

IV.

That because of said injury to the plaintiff's said bridge the plaintiff will be put to great expense to repair the same and the plaintiff will be thrown out of the use of said bridge for a long period of time, and will lose the profits thereof and that plaintiff has been damaged by reason of the premises in the sum of \$15,000.00.

V.

That because of the premises the plaintiff has a lien on the said steamer Norwood, her boilers, engines, tackles, apparel and furniture for the amount of the said damages, to-wit, the sum of \$15,000.00, together with the costs of this action and plaintiff claims a lien under the statutes and laws of the state of Washington in such cases made and provided.

VI.

That plaintiff is informed and believes that all of the defendants in this action are non-residents of the state of Washington and also that said defendants are at the present time absent from the state of Washington, except the defendant Martin, master of said vessel and Ed. Hulbert, who is now at Aberdeen, Washington, and that said vessel is at the present time engaged in loading a cargo of lumber at Aberdeen, Washington, preparatory to departing with the same for some port in the State of California and that the defendants are preparing to take said vessel out of the state of Washington and out of the jurisdiction of this court and will do so unless restrained by order of this court.

VII.

That a proper case exists for the appointment of a receiver of said vessel, her engines, boilers, tackle, apparel and furniture for the purpose of taking possession of said vessel and caring for the same and holding and keeping the same within the jurisdiction of this court to abide the result of this action and that without the appointment of such receiver for said vessel, plaintiff fears and has good reason to fear that the defendant, Martin, master of said vessel would take said vessel out of the jurisdiction of this court.

VIII.

That said vessel will be loaded and prepared for sea within the next 24 hours and will leave said state of Washington within said time and time does not exist for the giving of notice of application for a temporary restraining order herein or to give notice of an application for the appointment of a temporary receiver herein and plaintiff believes and has reason to believe that if notice of such application were given to the defendants they would immediately and before the court could act upon the same, withdraw said vessel from the jurisdiction of this court and that an emergency exists for the granting of a temporary restraining order and of the appointment of a temporary receiver without notice.

Wherefore the plaintiff prays that a temporary restraining order and order to show cause be issued herein requiring the defendants to show cause at a time to be fixed by the court why a temporary injunction should not be granted restraining the defendants from removing said vessel, her boilers, engines, tackle, apparel and furniture out of the jurisdiction of this court or out of the State of Washington during the pendency of this action and that in the meantime defendants and each of them and their servants, agents and employees be enjoined and restrained from removing said vessel from Aberdeen, Washington and that an order be made herein requiring the defendants to show cause at a date set, why a receiver should not be appointed by this court to take possession of said vessel during the pendency of this action and pending a hearing of such order to show cause that a temporary receiver be appointed by this court to take and hold possession of said vessel and her equipment; that upon the final hearing in this cause that the plaintiff be adjudged to have a lien upon the said vessel, her boilers, engines, tackle, apparel and furniture for the amount of his said damages, to-wit for the sum of \$15,000.00 and the costs of this action, and that the said vessel, her engines, boilers, tackle, apparel and furniture be sold under the order and decree of this court and that the proceeds arising from such sale after deducting the costs and expenses thereof, be applied as far as necessary to the satisfaction of the plaintiff's said lien and that the defendants be adjudged to be personally liable to the plaintiff for the amount of the plaintiff's said damages and costs and that the plaintiff have personal judgment against the defendants and each of them for the amount of

any deficiency remaining after said sale, and that such other and further relief be granted as to the court may seem just.

JOHN C. HOGAN,
Attorney for Plaintiff.

STATE OF WASHINGTON,
County of Chehalis, ss:

John C. Hogan, being first duly sworn, on oath says, that he is the attorney for the plaintiff in the above entitled action and makes this verification in plaintiff's brief for the reason that the plaintiff is not now within the state of Washington to verify the same; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

JOHN C. HOGAN.

Subscribed and sworn to before me this 9th day of May, 1906.

F. E. JONES,
*Notary Public in and for said State,
Residing at Aberdeen, Washington.*

Filed May 9, 1906.

W. C. BIRDWELL, *Clerk.*
A. E. GRAHAM, *Deputy.*

In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,
vs.

Captain MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Ed. Hulbert, John Doe Sudden, John Doe, and Richard Roe, Defendants.

Affidavit.

STATE OF WASHINGTON,
County of Chehalis, ss:

John C. Hogan, being first duly sworn, on oath says: that he makes this affidavit for and on behalf of the plaintiff in the above entitled action in support of the application of a receiver of the steamer Norwood, her tackle, engines, boilers, apparel and furniture; that he has heard the complaint herein, is familiar with the contents thereof and he hereby adopts said complaint as his affidavit as fully as if set out herein; that the said steamer Norwood is advertised to sail for California on Thursday the 10th day of May, 1906, and that affiant believes that an emergency exists for the appointment of a temporary receiver to take possession of said vessel; that if said vessel is permitted to go outside the jurisdiction of this court the plaintiff herein will lose his lien upon the said vessel, as affiant believes.

JOHN C. HOGAN.

Subscribed and sworn to before me this 9th day of May, 1906.

F. E. JONES,
*Notary Public in and for said State,
Residing at Aberdeen, Wash.*

Filed May 9, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

* * * * *

(Record, page 24.)

In the Superior Court of the State of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN et al., Defendants.

Demurrer.

Come now the above named defendants and for their demurrer to the complaint of plaintiffs, herein, allege:

I. That the court has no jurisdiction over the subject matter of the action.

II. That the complaint does not state facts sufficient to constitute a cause of action.

Wherefore, defendants pray judgment of the said complaint and that they go hence without day and with their costs.

J. C. CROSS,
Attorney for Defendants.

Filed May 29, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

* * * * *

(Record, page 26.)

In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Order.

The above entitled cause coming on regularly to be heard upon the demurrer of the defendants to the complaint of the plaintiff herein, and the same having been argued by counsel and the court being fully advised in the premises,

It is ordered that the said demurrer be and the same is hereby overruled. Defendants given ten days in which to answer.

Dated this 31st day of August, 1906.

MASON IRWIN, *Judge*.

O. K. as to form.

J. C. CROSS.

Filed August 31st, 1906, and entered on page 4 of Journal No. 23.
W. C. BIRDWELL, *Clerk*.

* * * * *

(Record, page 29.)

In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, and CHARLES E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Separate Answer of John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, John Sudden, and Robert Sudden.

Come now defendants, John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, John Sudden and Robert Sudden, without waiving their demurrer herein and still insisting upon their rights as claimed under such demurrer, for their joint and several answer to the complaint of plaintiff made and filed herein, admit, deny and allege as follows:

I.

Answering the allegations embraced in Paragraph "I" of plaintiff's complaint, they admit that the Steamer Norwood is an enrolled vessel; they admit that the said vessel is of about Seven Hundred and Sixty tons gross burden or about Five Hundred tons net burden; they admit that at the time of the commencement of this action the Steamer Norwood was lying at the wharf of the Aberdeen Lumber & Shingle Company's in the Chehalis River at Aberdeen, Chehalis County, Washington; they admit that Sudden & Christenson of San Francisco, California, are the managing owners of the said steamer Norwood; they admit that John I. Martin at the times mentioned in the complaint was and is the Captain and Master of the said steamer and as such was in the possession and control of the said vessel at the time stated in said complaint; but each and every other allegation, matter and thing in said Paragraph "I" contained, and not herein specifically admitted, these answering defendants deny.

II.

Answering unto the allegations embraced in Paragraph "II" of the plaintiff's complaint these answering defendants admit that

the bridge referred to in said complaint was composed of wood, and iron; they admit that the said bridge was a toll bridge with approaches on each side of the draw of said bridge; they admit that the said bridge was used as a toll bridge for the passage of passengers, street cars, teams and vehicles from whom and for which, tolls were collected for passage over said bridge; they admit that the bridge had been erected and operated for some time prior to the 7th day of May, 1906; they admit that the bridge was provided with swinging span capable of being opened by revolving the same upon a central pier constructed at or near the middle of the Chehalis River; they admit that when the bridge was swung open it afforded passage-ways upon each side of the swinging span for the passage of vessels up and down the Chehalis River; but these defendants say that they are not informed, except from the complaint of plaintiff, whether the said plaintiff was on the 7th day of May, 1906, or since has been the owner of the said bridge and therefore these answering defendants do not admit the same but insist that the said plaintiff shall be required to prove his allegation of ownership; but each and every other allegation, matter and thing in said paragraph "II" contained and not specifically admitted, these defendants deny.

III.

Answering unto the allegations of Paragraph "III" of plaintiff's complaint these answering defendants admit that on the 7th day of May, 1906, the defendant, Captain Martin, Master of the said vessel was engaged in conducting the said Steamer Norwood together with her boilers, engines, tackle, apparel and furniture on the waters of Grays Harbor and of the Chehalis River and that he was required to and did conduct the said vessel through the opening of the said bridge made by the said draw span; they admit that except as affected by the wind and tides the said steamer was operated and by virtue of her own motor power or steam; but each and every other allegation, matter and thing in said Paragraph "III" contained and not herein specifically admitted, these answering defendants deny.

IV.

Answering the allegations contained in Paragraph "IV" of plaintiff's complaint these defendants deny said allegations and each and every of said allegations in said Paragraph "IV" contained.

V.

Defendants deny each and every allegation contained in paragraph "V" of plaintiff's complaint and the whole thereof.

VI.

These answering defendants for their answer to the allegations contained in Paragraph "VI" of plaintiff's complaint, admit that at the time of the commencement of this action they were, and that since the commencement of said action they have been and now are non-residents of the State of Washington; they admit that at the time of the commencement of this action the Master of the said

vessel was engaged in loading the said vessel with lumber, at the wharf of the Aberdeen Lumber & Shingle Company, in the waters of the Chehalis River in said County, preparatory to the carrying of such cargo out of the State of Washington coastwise and to the State of California.

VII.

These answering defendants deny each and every allegation, matter and thing contained in Paragraph "VII" of plaintiff's complaint.

VIII.

Defendants for their answer to the allegations contained in Paragraph "VIII" of plaintiff's complaint, admit that but for the intervention of this Court the said Steamer Norwood would have operated from the State of Washington and City of Aberdeen, Chehalis County, with her cargo on the 10th day of May, 1906, coastwise to the state of California as hereinbefore stated; but each and every other allegation, matter and thing contained in Paragraph "VIII" and not herein expressly admitted these defendants deny.

And for further answer and for their first affirmative defense herein, these defendants allege:

First. That during all the times herein mentioned and at the present time the plaintiff herein has been and is a citizen and resident of the City of Aberdeen, Chehalis County, Washington, claiming to own and operate a toll bridge across the Chehalis River, between Aberdeen proper and South Aberdeen, in Chehalis County, Washington.

Second. That during all the times herein mentioned and at the present time the defendants herein have been and are citizens and residents of the City and County of San Francisco, and State of California.

Third. That during all the times herein mentioned and at the present time the Steamer Norwood has been and is an ocean-going vessel registered at San Francisco in the State of California under the navigation laws of the United States, with the name "Norwood," painted on her bow and stern, and employed by her owners upon the Pacific Coast between the City of Francisco in the State of California and points in the State of Washington and particular points on Grays Harbor in the said last named State, as a common carrier for hire.

Fourth. That during all the times herein mentioned the Chehalis River has been and now is a public navigable stream flowing into Grays Harbor, and thence into the Pacific Ocean upon which commerce is carried in steam and sailing vessels to and from points on said river in the State of Washington to and from points in other States and foreign countries, and has been and now is a navigable stream for all commercial purposes, in which, for a number of miles inland, the tides ebb and flow and is free and open for all the citizens of the United States who are entitled to navigate the same by sailing and steam vessels and otherwise

without impediment or obstruction; that Grays Harbor is an arm of the sea or Pacific Ocean in which the tides ebb and flow and is navigable for all commercial purposes by sailing or steam vessels or otherwise, the full length of the Harbor and for a distance of about eighteen miles from the said Pacific Ocean inland; that the City of Aberdeen, in Chehalis County, Washington, is situated on the Northerly shore of the said River and Harbor and South Aberdeen in Chehalis County is situated on the Southerly shore of the said river and harbor, and at or near the point of confluence of the said river into or with the said Grays Harbor; that at or near the point of such confluence, the said bridge claimed by plaintiff in this action, has been constructed, same being about Seventeen Hundred feet in length and extending across the waters of the said River and Harbor and connecting the said Southerly Banks of the said waters in South Aberdeen, aforesaid, with the Northerly Banks of the said waters in Aberdeen proper; that as part of its construction the said bridge was provided with a swinging draw span about Two Hundred and Fifty feet in length or about One Hundred and Twenty-five feet upon each side of the central pier or pivot thereof, which is located at or near the middle of the channel of the said River or Harbor aforesaid; that by means of such draw the navigation of said River and Harbor along the line of and through the said bridge is possible, but not otherwise.

Fifth. That the said Steamer Norwood, being in good order and well and sufficiently equipped and manned, did on the 4th day of May, 1906, sail from her home port of San Francisco in the State of California bound for the City of Aberdeen in the State of Washington, having on board, passengers, and freight destined for the last named City; that said Steamer Norwood, proceeded on her passage at her regular rate of speed until she arrived at the "G" street dock, in the City of Aberdeen in the State of Washington on the 7th day of May, 1906, at the hour of about ten o'clock in the forenoon of said day; that at the place last mentioned the said Steamer Norwood, having discharged her passengers and cargo of freight destined for the City of Aberdeen, was about to proceed to the dock or wharf of the Aberdeen Lumber & Shingle Company, situated on the waters of the said Chehalis River in South Aberdeen, aforesaid, a distance of about Forty Four Hundred Feet up said River from the said "G" Street wharf or dock, same being the place where the said Steamer Norwood was to receive her cargo of freight destined for the City of San Francisco in the State of California, when the said Steamer gave the usual and customary signals to the said plaintiff and his employees in charge of said bridge and draw, to-wit:—One long and Three short whistles, for the opening of the said bridge for the passage of the said Steamer from the said "G" Street wharf or dock to the said wharf or dock of the said Aberdeen Lumber & Shingle Company; that the said "G" Street wharf or dock where the said signals were given was and is distant from the said draw bridge about Eighteen Hundred Feet; that upon the giving of the said signals the Master of the said vessel, defendant herein, Captain I. Martin, relieved the said vessel of her fastenings at the said "G" Street wharf or dock and pro-

ceeded in a slow and cautious manner towards the said bridge using only such of the motor power of the said vessel as was necessary to control the same; that at the date last aforesaid there was blowing upon the waters of the said River and Harbor a strong northwesterly wind; that at the time and place there was a strong flow of the tide in the said waters; that the winds and tides were moving in the same direction as and with the vessel towards said bridge from the said "G" Street wharf or dock; that upon the giving of the signals to open the said bridge, as aforesaid, the tenders of the said bridge or the parties in charge of the said bridge gave no indication by signal or otherwise that the signals to open would not be complied with, and the Master of said vessel, defendant herein, had every reason to believe that the signals of the said vessel to open the said bridge would be complied with and the said bridge opened for the passage of the said vessel in due time; that after the said vessel had proceeded towards the said bridge and had gotten at a point about midway between the said "G" Street wharf or dock and the said bridge, to-wit: about Nine Hundred Feet from the said bridge, it was discovered by the Master of the said vessel that the said bridge had not opened, whereupon the Master of the said vessel repeated his signals to open the said bridge and at the same time brought his vessel as nearly to a stand still as it was possible to do under the conditions stated; that upon the giving of the said second signals by the said Steamer to open the said bridge, the Master of the said vessel, defendant herein, Captain John I. Martin, observed that the said bridge was being opened by revolving the draw span with the northerly end thereof up the said river and from the said vessel, whereupon the said Master was induced to believe and did believe that the said bridge would be opened in due time for the passage of the said vessel by the time the said vessel had reached the bridge and was ready to make such passage; that acting upon such belief and not knowing to the contrary, the Master aforesaid, proceeded with his said vessel in a slow and cautious manner in the direction of such anticipated opening and while thus proceeding and when within about one hundred and fifty feet of the dolphin or rest for the said draw span, the said Master observed for the first time that the tenders of the said bridge or parties having it in charge, had not only failed to complete the opening of the said bridge as theretofore indicated, and expected by the said Master, but had in truth and in fact brought the said bridge back to a closed position, thereby entirely cutting off and rendering impossible the passage of the said vessel through the said draw or opening by completely obstructing the navigation of the said river and at the same time the employees of plaintiff and tenders of said bridge gave signal to the said vessel by violently waving a red flag toward the said vessel from the said bridge, which signal *meant* to the master of the said vessel, and was understood by the Master to mean that the bridge was out of repair and would not be opened and that it was dangerous and that the vessel should keep off; that the said Master, defendant herein, finding himself

and his vessel in an extremely dangerous position, caused by the negligence and misconduct and failure of the tenders of the said bridge across the said River, to open the draw in time for the passage of his steamer, and in closing the draw as above stated and in the giving of the said signal, did, for the purpose of avoiding any injury or damage to said vessel and the said bridge or either of them, endeavor to change the course of the said vessel in such a manner and form as to avoid any collision of the said vessel with the said bridge; but by reason of the proximity of the said vessel to the said bridge endeavored to back said vessel, but finding that to do so would cause said vessel to collide with the center pier or span rest of said bridge, then endeavored to turn said vessel around and return down stream, but when he had turned said vessel part way around he found that there was not room, because of the narrowness of the said stream, to enable him to completely turn said vessel around, and that if he continued in the direction he was going he would strand said vessel in the shallow water on the south side of said stream, thereupon, he dropped anchor and endeavored by that means to prevent the collision between said vessel and said bridge, but that the wind and tide carried the stern of said vessel around towards said bridge and caused it to strike lightly the cross-beam on the pier of said bridge, or the superstructure of said bridge, without any fault or negligence on the part of her said Master or parties having charge of said vessel; that the said Captain or Master, and crew of the said steamer Norwood, used the greatest skill and care in the management of the same at the time aforesaid and took every possible precaution to prevent the occurrence of any accidents; that every precaution was taken and every effort made and all reasonable care, skill and diligence used by the person having charge of the said vessel, to avoid such collision, but under the conditions hereinbefore expressed and hereinafter stated, the collision could not be avoided.

Sixth. That the accident aforesaid and its effects were the result of each and every of the following negligent and wrongful acts, matters and things done and committed by the owner of the said bridge and the tenders thereof, to-wit:

1. That the piers made and used for the support of that part of the said bridge with which the said vessel collided, as aforesaid, were wholly insufficient in size and construction for the uses and purposes above stated; that the said bridge was out of repair.

2. That the piers last above mentioned were on the 7th day of May, 1906, and for a long time prior thereto allowed to be and remain in a wholly unprotected condition, when at a small cost and expense each and every of the said piers might and could, and in fact, should have been protected by means of dolphins driven in the bottom of the said River above and below such piers.

3. That the owner of said bridge and those having charge of the operation of the said bridge, failed to provide the Master of said vessel with any rules or regulations or signals for the management of the said bridge, and the Master of the said vessel was wholly unadvised of such regulations, if there were any.

4. That the said owner of the said bridge failed to provide suitable and competent person or persons to manipulate or tend the said bridge and conduct its operation as by law they are bound to do.

5. That the owner of the said bridge and those having charge of its use and operation relied upon electricity to operate the draw; and under pretense of operating said bridge by means of electricity, procured to be used and did use in connection with such operation of the said draw span of the said bridge, electric machinery wholly inadequate for such use; that the wire cable which conducted the electricity to the machinery of the said bridge was broken, of which plaintiff and his employees in charge of the said bridge had knowledge, and that the electric energy with which the draw was operated was also used to operate the street cars, and that when the street car was approaching said bridge it consumed so much of the electric energy that there was not enough power left to promptly and expeditiously operate the draw, and that at the time the said vessel was giving signals to open said draw a street car was approaching said bridge and had nearly reached it and consumed the electric energy or so much of it that there was not enough transmitted to the machinery of said bridge to operate said draw; and that said bridge was further out of repair to such an extent, that when there was not enough electricity to operate said draw it would bind and stick on the piers or on the center, and it required more than hand power supplied by plaintiff to properly operate said draw, and that at that particular time the bridge tender, the employee of plaintiff was just out of the hospital recovering from severe illness and had not sufficient strength to open said draw, and plaintiff had neglected to supply him with competent and sufficient assistance to operate the said draw.

6. That the owner of the said bridge and those having charge of the same as tenders, did, on the 7th day of May, 1906, wrongfully and unlawfully give preference to passage over said bridge when and at such time as such owner and tenders should have made ready for the passage of said vessel, and the time when the said bridge should have been opened for the passage of the said vessel was employed by such owner and tenders in receiving and giving passage over said bridge to foot and wagon passengers.

7. That the said tenders of the said bridge failed to give the Master of said vessel any warning or signal in any manner or form whatsoever, that the bridge would not be opened in response to the whistles of the said vessel as hereinabove alleged until the said Steamer had approached to a dangerous position relative to said bridge that the signal finally used was wholly inadequate for the purposes intended, both as to kind and manner and time of giving such signals.

8. That the owner of the said bridge and those employed in its use and operation as tenders were guilty of great negligence and want of care in deceiving the said Master of the said vessel into the belief that the said bridge would be opened, by opening the same partially and then closing it against the vessel and its passage and the giving of the said danger signal, whereby the said Steamer was placed in an extremely dangerous position from which condition or position, caused as aforesaid, the said Master of said vessel was attempting to relieve the said vessel when the collision occurred.

As another further and second affirmative defense herein defendants allege.

First. That by reference thereto defendants herein, make each and every allegation, matter and thing set forth in paragraph- "first to sixth" inclusive, of defendants' "First Affirmative Defense" herein, and each and every of the sub-division- of the said paragraph a part of this allegation and paragraph and defense.

Second. That by reason of all the matters and things so above alleged in the first paragraph of defendants' "Second Affirmative Defense," herein, this Honorable Court has not jurisdiction and ought not to proceed to enforce the claim alleged in plaintiff's complaint herein against the said Steamer Norwood, or against these defendants in their proper person as prayed for in and by said complaint for the following reasons and each of them, to-wit:

1. Because the right of action in this case is based upon the provisions of Secs. 5953 and 5954 of Bal. Code and Statutes of Washington and particularly sub-division "6" of said Sec. 5953; that the right thereby created and sought to be enforced in this action by the plaintiff herein, is in violation of the 8th Sec. of Art. "1" of the Constitution of the United States, which provides, among other things, as follows, to-wit:

"Congress shall have power: To regulate commerce with foreign nations and among the several states."

2. Because the enforcement of Secs. 5953 and 5954 of Bal. Code and Statutes of Washington as sought by the Plaintiff in this action would be to deprive the owners of the Steamer Norwood, of their property without due process of law and without the equal protection of the law as provided by Art. "14" of the Amendments to the Constitution of the United States, which is as follows, to-wit:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. Because the enforcement in this case of Plaintiff's alleged cause of action based upon Secs. 5953 and 5954 of Bal. Code and Statutes of Washington would be in violation of defendants' rights as expressed in Sec. "2" of Article "3" of the Constitution of the United States, as follows, to-wit:

"The judicial power shall extend to all cases of admiralty and maritime jurisdiction."

And sub-division 8th of Sec. 563 of the Revised Statutes of the United States, which provided that "The district courts shall have jurisdiction as follows: Of all civil causes of admiralty and maritime jurisdiction."

Wherefore these defendants having fully answered pray judgment:

1. That plaintiff take nothing by his suit herein.

2. That these answering defendants go hence without day and with their costs and disbursements herein.

J. C. CROSS AND
W. H. BRINKER,
Attorneys for Defendants.

STATE OF WASHINGTON,

County of Chehalis, ss:

J. C. Cross being first duly sworn on oath states that he is one of the attorneys for the defendants in the above entitled action, and makes this affidavit on behalf of said defendants for the reason that they are not now within said Chehalis County; that he has read the foregoing answer knows the contents thereof, and that the same is true as he verily believes.

J. C. CROSS.

Subscribed and sworn to before me this 15th day of September, 1906.

[SEAL.]

A. EMERSON CROSS,

Notary Public in and for the State of Washington.

Residing at Aberdeen, Wash.

Filed Sep. 27, 1906.

W. C. BIRDWELL, *Clerk.*

* * * * *

(Record, page 46.)

In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, et al., Defendants.

Reply.

Now comes the plaintiff and for his reply to the separate answer of the defendants Martin, Sudden & Christenson, et al., respectfully shows to the court:

I.

That replying to paragraph 5 of the first affirmative defense of said answer, the plaintiff denies the same and each and every allegation therein contained.

II.

That replying to paragraph 6 of said answer and the several subdivisions of said paragraph 6 the plaintiff denies the same and each and every allegation therein contained.

III.

That replying to the second affirmative defense contained in said answer, the plaintiff denies each and every allegation contained in said second affirmative defense on pages 11 and 12 of said answer, the same being all of the allegations of the second affirmative defense.

IV.

That replying to paragraph 2 of the first affirmative defense of page 4 of said answer, this plaintiff has not sufficient knowledge

for information to form a belief as to the truth of the matters therein alleged.

JOHN C. HOGAN,
Attorney for Plaintiff.

STATE OF WASHINGTON,
County of Chehalis, ss:

A. J. West, being first duly sworn, on oath says: that he is the plaintiff in the above entitled action; that he has read the foregoing reply knows the contents thereof and believes the same to be true.

A. J. WEST.

Subscribed and sworn to before me this 25th day of September, 1906.

JOHN C. HOGAN,
*Notary Public in and for said State,
Residing at Aberdeen, Washington.*

Filed Nov. 3, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

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(Record, page 49.)

In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Motion.

Now comes the plaintiff in the above entitled action and moves the court for an order permitting the plaintiff to amend his complaint herein by adding at the end of paragraph 1 of said complaint, the following "that the said Sudden & Christenson is a foreign corporation organized under the laws of California authorized to transact business within the State of Washington and actually engaged in the transaction of business in the said last named state."

Plaintiff further moves for leave to file a supplemental complaint wherein copy of which is herewith served.

JOHN C. HOGAN,
Attorney for Plaintiff.

To J. C. Cross, Attorney for defendants:

Take notice that at the court house in the City of Montesano, Chehalis County, Washington, on November 5, 1906, the plaintiff will call up for argument and decision by the court the foregoing motion.

JOHN C. HOGAN,
Attorney for Plaintiff.

Filed Nov. 3, 1906.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM, *Deputy.*

* * * * *

(Record, page 51.)

In the Superior Court of the State of Washington for Chehalis
County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Order on Motion.

This cause coming on for hearing on the motion of plaintiff *motion* to amend the complaint and the same being argued by counsel, and the court being fully advised in the premises, it is ordered that the said motion be and the same is hereby granted and the plaintiff is allowed to amend by interlineation to which ruling of the Court Def'ts excepts and *his* exception is allowed.

Done in open Court this 5th day of Nov. 1906.

MASON IRWIN, *Judge.*

Filed Nov. 5th, 1906, and entered on page 86 of Journal No. 23.

W. C. BIRDWELL, *Clerk.*

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(Record, page 54.)

In the Superior Court of the State of Washington for Chehalis
County.

No. 6330.

A. J. WEST, Plaintiff,

vs.

Capt. JOHN I. MARTIN et al., Defendants.

Memorandum of Decision.

This action was brought by the plaintiff against the defendants for the purpose of recovering damages alleged to have been sustained by reason of the steamship Norwood colliding with the bridge which crosses the Chehalis River at Aberdeen and is owned by the plaintiff. The first objection that is made to the complaint by the defendants is that this court has no jurisdiction over the subject-matter of the action, and the defendants have cited a great many authorities, which they contend, support their position. All the cases that I have been able to obtain and examine are cases where the owner of the ship *have* sued the owner of the bridge for damages to the ship occasioned by a collision with the bridge. All of those cases were in admiralty courts and it must be conceded that the admiralty assumes jurisdiction of all such cases, that is where the owner of the ship complains of injury to his ship by reason of collision with the bridge, but on the contrary all authorities upon the subject hold that

where the injury complained of is to the bridge and not to the ship in those cases it is held that the bridge, although it spans the water, is a land structure built permanently upon the land, and that admiralty will not assume jurisdiction for such cases of action and that the remedy for such an injury must be sought in the state courts. I therefore hold that in this case the court had jurisdiction over the subject matter of this action.

It is admitted that the ship *Nerwood* did collide with the bridge and that one of the piers shortly thereafter collapsed and one span of the bridge fell into the river. The question then between the parties is who was guilty of the negligence which caused the collision. The evidence in the case was very conflicting.

On the part of the plaintiff it was to the effect that the ship signalled for the bridge to open when opposite the mouth of the Wishkah River, about eight hundred feet from the bridge, and that the course the steamer was taking indicated that the captain wished to pass through the north draw of the bridge; that the bridge tender immediately waved a red flag as a signal of danger and then proceeded to open the bridge with the north draw turning up the river and away from the steamer; that the steamer came on approaching the bridge, and when she was within 150 feet or 200 feet of the bridge suddenly turned her course as if either to turn around or with an intent to pass through the south draw of the bridge, and that she afterwards got part way turned round and her stern swinging in toward the south pier of the bridge the captain then endeavored to back through the south draw and struck the south pier.

The evidence on the part of the defendants was to the effect that when the captain saw the signal of the flag he approached under a slow bell and that the bridge instead of opening the north end up the river and away from the ship, as it had started to do, stopped and turned the other way, bringing the north end down the river and towards the ship, and that when he saw this movement on the part of the bridge he changed his course in an endeavor to pass through the south side of the draw, but was unable to do so and came in contact with the bridge, exercising his best skill and ability to avoid doing so.

The evidence of all the witnesses who were on the bridge and engaged in the opening of the bridge was to the effect that the north end of the bridge opened up the river and away from the ship, and that it continued on its course from the time it started until it was clear open and did not change its course and did not open down the river and towards the ship. These witnesses, being on the bridge and engaged in opening the bridge were in better position to know how the bridge actually was opened than persons from any other point of view. Their testimony was corroborated also by the witness Leach, who stood on the Bryden and Leitch wharf on the south side of the river, watching the operations of the ship and bridge. It was also corroborated by other witnesses and by one standing on Wilson's mill wharf on the north side of the river and very near to the bridge.

The weight of evidence upon this point is with the plaintiff. Plaintiff's witnesses were certainly in a better position to observe the way in which the bridge was opened than other witnesses. We there-

fore conclude that the captain must have been mistaken in thinking that the bridge stopped in its original course of opening and turned to open in the opposite direction, and that therefore the negligence was upon his part and not upon the bridge tenders.

The testimony of all those upon the bridge was to the effect that if the ship had continued her course as originally taken to pass through the north side of the draw there would have been no accident for the reason that the bridge was almost entirely open, or at least sufficiently so to have allowed the vessel to pass through if it had continued its course through the north draw.

The plaintiff will be given judgment in the sum of \$10,511.89 dollars which I find to be the actual cost of reconstructing the bridge in as good condition as it was when struck by the steamer, to which will be added the sum of \$3,240 loss of income during the time that the bridge was down, making a total of \$13,751.89.

MASON IRWIN, *Judge*.

Dated this 26th day of January, 1907.

Filed Jan. 26, 1907.

W. C. BIRDWELL, *Clerk*.

A. E. GRAHAM, *Deputy*.

(Record, page 58.)

In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, and CHARLES E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Findings of Fact and Conclusions of Law.

The above entitled cause coming on regularly to be tried upon the issues raised by the pleadings herein, the plaintiff, A. J. West, appearing in person and by his attorney, and the defendants John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John Sudden, appearing by their attorneys W. H. Brinker and J. C. Cross, and after hearing the evidence and arguments of the counsel, the court being fully advised in the premises, finds:

I.

That on the 7th day of May, 1906, the plaintiff, A. J. West, was the owner of a certain steel or combination wood and steel draw-bridge together with the approaches belonging to the same, extending across the Chehalis River from South Aberdeen to Aberdeen proper in Chehalis County, Washington, said bridge being used by the plaintiff as a toll bridge for the passage of passengers, street cars, teams and vehicles from whom and from which the plaintiff was entitled to collect and did collect tolls; that said bridge had been erected and

was maintained and operated by said plaintiff at said point for some months prior to said date and that the erection and maintenance of said bridge was affirmatively authorized by the Honorable Secretary of War of the United States and that the same constituted and was a lawful structure in said stream; that said drawbridge was provided with a large swinging span capable of being opened by revolving the same upon a central pier constructed in the channel of the said Chehalis River so that when said span was open it afforded two passage-ways, one on each side of said central pier for the passage of vessels, steamers and other crafts up and down the said Chehalis River.

II.

That on the 7th day of May, 1906, the defendants, John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John Sudden, owners of the steamer "Norwood," were engaged in operating said steamer on the said Chehalis River, said steamer being making regular runs between Grays Harbor, Washington, and San Francisco, California; that said vessel was a vessel of the steam schooner type having a gross ton-age of about 760 tons and a net ton-age of about 490 tons; that on the said 7th day of May, 1906, the said defendants last above named, were engaged in operating the said steamer "Norwood," together with her boilers, engines, tackle, apparel and furniture, in the vicinity of the said plaintiff's bridge, said steamer "Norwood" being under her own steam and motive power, and that while said defendants were engaged in passing their vessel through the draw of the plaintiff's said bridge, the defendants negligently, carelessly and through failure to exercise ordinary skill in the handling, management and navigation of said vessel, ran said vessel against the supporting piers of one of the spans of plaintiff's said bridge and struck, broke and injured the piers supporting the plaintiff's said bridge to such an extent that within a few hours thereafter, one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the Chehalis River and was broken up and almost wholly destroyed.

III.

That the damage done by the said defendants to the plaintiff's said bridge was the sum of \$10,511.89.

IV.

That by reason of the breaking and injury done by the said defendants to the plaintiff's said bridge, the plaintiff was deprived of the use of said bridge and of the earning thereof from May 7, 1906, to October 20, 1906, and that the plaintiff's loss and damage by reason of so being deprived of the use and earning of said bridge for said period was the sum of \$3240.00.

V.

That the plaintiff's total damage by reason of said defendants' wrongful acts amounted to the sum of \$13,751.89 for which damage

and loss the plaintiff claimed and asserted a lien upon the said steamer "Norwood" her boilers, engines, tackle, apparel and furniture and caused said vessel to be seized thereunder but that said vessel after seizure was upon the application of said defendants, released upon a bond given herein and the security of said bond was substituted for the said vessel.

Conclusions of Law.

And as conclusions of law the court finds:

1. That the plaintiff, A. J. West, is entitled to a judgment against the defendants, John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John Sudden for the sum of \$13,751.89 together with the costs and disbursements of this action and is entitled to have execution therefor.

2. That the said plaintiff is entitled to have recourse upon the bond filed herein, by action upon said bond, for the collection and enforcement of said judgment.

The defendants except to each and every one of the foregoing findings and conclusions and their exceptions are allowed.

Dated this 26th day of March, 1907.

MASON IRWIN, *Judge.*

Filed Mar. 26, 1907.

W. C. BIRDWELL, *Clerk.*

(Record, page 61.)

In the Superior Court, State of Washington, for Chehalis County.

A. J. WEST, Plaintiff,

vs.

Captain JOHN I. MARTIN, Sudden & CHRISTENSON, and CHARLES E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Defendants.

Judgment.

The above entitled action coming on regularly to be tried, before the court without a jury, in accordance with the stipulation of the parties filed herein, and the plaintiff, A. J. West, appearing in person and by his attorney, and the defendants, John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, appearing by their attorneys W. H. Brinker and J. C. Cross, the defendant John I. Martin also appearing in person, and after hearing the evidence and the arguments of the counsel, the court made and entered its findings of fact and conclusions of law herein, now, therefore, in accordance with said findings of fact and conclusions of law, on motion of the plaintiff,

It is ordered and adjudged that the plaintiff, A. J. West, do have and recover of and from the defendants John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden

and John Sudden, and each of them, the sum of Thirteen Thousand Seven Hundred Fifty-one and 89/100 Dollars (\$13,751.89) together with the costs and disbursements of this action taxed at the sum of \$222.70 Dollars, and that execution issue therefor.

Defendants except and there exception is allowed.

Dated this 26th day of March, 1907.

MASON IRWIN, *Judge.*

Filed March 26, 1907, and entered on page 252 of Journal No. 23.

W. C. BIRDWELL, *Clerk.*

* * * * *

(Record, page 71.)

In the Superior Court of Washington in and for Chehalis County.

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHAS. E. SUDDEN, E. A. Christenson, Robert Sudden, John Sudden and Ed. Hulbert, Defendants.

Notice of Appeal.

To the above named Plaintiff, A. J. West, and to John C. Hogan, Esq., his attorney of record herein, and to Ed. Hulbert, defendant herein, and to J. C. Cross, his attorney of record herein:

You and each of you will take notice that the defendant, John I. Martin, Sudden & Christenson, Chas. E. Sudden, E. A. Christenson, John Sudden and Robert Sudden, feeling themselves aggrieved at the judgment and decree made and entered herein, have and by these presents do appeal to the Supreme Court of the State of Washington from the final judgment made and entered in said cause on the 26th day of March, 1907, and from each and every order made and entered in said cause adversely to the defendants last aforesaid, during the progress of the said cause or the pendency of the said action in the above entitled court.

Dated this the 6th day of May, A. D. 1907.

J. C. CROSS AND

WM. H. BRINKER,

*Attorneys for Defendants, John I. Martin,
Sudden & Christenson, Chas. E. Sudden,
E. A. Christenson, Robert Sudden, and
John Sudden.*

Service of the above notice of Appeal acknowledged this the 7th day of May, A. D. 1907.

JOHN C. HOGAN,

Attorney for Plaintiff.

Filed May 9, 1907, and entered on Page 306 of Journal No. 23.

W. C. BIRDWELL, *Clerk.*

* * * * *

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(Record, page 76.)

In the Superior Court of Washington in and for Chehalis County

A. J. WEST, Plaintiff,

vs.

JOHN I. MARTIN et al., Defendants.

Exceptions.

Come now the above named defendants by their attorneys record herein and except and object to the Findings of Fact and Conclusions of Law and Judgment made and filed herein and the refusal of the court to make findings, conclusions and Judgment in favor of the defendants, respectfully represent and say:

That in the trial of the said cause and in the making of its findings of fact and conclusions of law and judgment and in its refusal to find for defendants upon the record in said cause, the court committed manifest errors to which defendants except as follows to-wit:

First. Exceptions to Affirmative Acts.—To the Affirmative Acts of the trial court the defendants submit the following exceptions:

1. They except to the ruling of the court denying defendants' objections to the jurisdiction of the court over the subject matter of the action.

2. They except to the action of the trial court in permitting plaintiff to amend his complaint at the time of the trial by substituting as a party defendant herein, the Sudden & Christenson Company, a corporation.

3. Defendants except to the action of the trial court in denying defendants' motion to dismiss plaintiff's action at the conclusion of plaintiff's testimony in chief.

4. Defendants except to the action of the trial court in denying defendants' motion for judgment upon the evidence offered and submitted at the conclusion of the trial herein.

5. Defendants except to the finding of the court to the effect that the erection and maintenance of the bridge involved in this action was authorized by the Secretary of War of the United States; and they except to the finding of the court that the bridge referred to consisted of spans substituted and was a lawful structure in the Chehalis River, because said findings are against the evidence.

6. Defendants except to the finding of the court that while the defendants were engaged in passing the steamer Norwood through the draw of plaintiff's bridge, they, the defendants negligently, carelessly and through failure to exercise ordinary skill in the handling, management and navigation of the said vessel, ran the said vessel against the supporting piers of one of the spans of plaintiff's said bridge to such an extent that within a few hours thereafter one of the spans of plaintiff's bridge collapsed and fell into the water of the Chehalis River and was broken up and was almost wholly destroyed, because said finding is contrary to the evidence and against the weight of the evidence.

7. Defendants except to the finding of the court to the effect that defendants damaged plaintiff's bridge in the sum of \$10,511.89 or in any other sum, because said finding is contrary to the evidence.

8. Defendants except to the finding of the court in effect that defendants were responsible and liable to plaintiff in damages for the loss of the use of the bridge in the sum of \$3,240.00, or in any other sum or at all, because said finding is contrary to the evidence.

9. Defendants except to the finding of the court to the effect that the acts of the defendants were wrongful; also in holding that defendants were responsible to plaintiffs in damages in the sum of \$13,751.89, or in any other sum, because said finding is contrary to the evidence.

10. Defendants except to the findings and conclusion of the court to the effect that plaintiff herein was entitled to a judgment against the defendants in the sum of \$13,751.89, together with costs and disbursements of this action; also in holding that the plaintiff was entitled to execution against the defendants in satisfaction of said sum, because said conclusion is against the law.

11. Defendants except to the action of the court in holding and concluding in effect that the plaintiff was entitled to have recourse upon the defendants' bond filed herein for the collection and enforcement of plaintiff's alleged damages, because said conclusion is contrary to law.

12. The court erred in rendering a judgment herein against these defendants in favor of the plaintiff for the sum of \$13,751.89 together with costs and disbursements of the action, or for any other sum or at all.

Second. Exceptions to Negative Acts.—To the negative acts of the trial court defendants submit the following exceptions:

1. Defendants except to the refusal of the court to find that the collision complained of was caused, primarily, by the negligence of the plaintiff or those in charge of the bridge.

2. Defendants except to the refusal of the court to find that the plaintiff or those in charge of the bridge at the time of the accident were guilty of negligence.

(a) In failing to provide suitable and necessary power for the operation of the bridge.

(b) In failing to provide sufficient and necessary help or men for the manipulation of the bridge.

(c) In failing to provide necessary or any signals governing the operation of the bridge.

(d) In failing to respond, within a reasonable length of time to the signals given by the vessel for the opening of the bridge.

(e) In giving false signals and in the making of false movements calculating to and which resulted in decoying the vessel into the dangerous position from which she could not extricate herself without colliding with the bridge.

3. The defendants except to the refusal of the court to find that the Steamer Norwood, had been and was duly, sufficiently, carefully provided with competent seamen at the time of the accident.

4. Defendants except to the refusal of the court to find that any error or errors committed by the master of the vessel at the time of

the accident were errors "In Extremis," only, from which no liability could arise.

5. Defendants except to the refusal of the trial court to declare Sections 5953 and 5954, Bal. Code to be unconstitutional in so far as it attempted to create liens against vessel engaged in interstate commerce.

6. Defendants except to the refusal of the court to declare Sections 5953 and 5954, Bal. Code to be inapplicable to the case at bar.

7. Defendants except to the refusal of the court to dismiss plaintiff's cause of action at the cost of the plaintiff.

Each and every of the above exceptions submitted and allowed by the Court this the 20th day of April, A. D. 1907.

MASON IRWIN,
Trial Judge.

Filed Apr. 23, 1907.

W. C. BIRDWELL, *Clerk.*

A. E. GRAHAM,
Deputy Clerk.

(Record, page 42.)

* * * * *

No. 7004.

Filed Oct. 29, 1907.

A. J. WEST, Respondent,
v.

Captain JOHN R. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, and John Sudden, Appellants.

This action was brought under the statutes of this state in relation to liens against steamers and other vessels. The purpose of the action is to recover damages alleged to have been sustained by the plaintiff on account of a collision between the steamer Norwood and the plaintiff's bridge. The complaint shows that the Norwood is an enrolled vessel, the owners and managing owners of which reside in the State of California, and that the plaintiff is the owner of a combination steel and wood drawbridge, together with the approaches belonging to the same, extending across the Chehalis river from Aberdeen to South Aberdeen in Chehalis county. On the 7th day of May, 1906, the bridge was being used by the plaintiff as a toll bridge for the passage of passengers, street cars and other traffic. It is alleged that the bridge was authorized by the secretary of war of the United States, and that it was a lawful structure in the navigable stream. The bridge was provided with a large swinging span, which was opened by revolving the same upon a central pier constructed in the channel of the river, so that when the bridge was opened it afforded two passageways about one hundred and twenty-five feet in width on each side of the central pier, for the passage of vessels up and down the river.

It is averred that, on the day aforesaid, the defendants were operating the Norwood upon said river, and that while they were engaged in passing the vessel through the draw of said bridge they negligently ran her against the supporting piers of one of the spans of the bridge, and thereby injured the piers to such an extent that within a few hours thereafter one of the spans fell into the waters of the river and was broken up and almost utterly destroyed. By virtue of the statutes aforesaid the complainant alleges, that the plaintiff is entitled to a lien upon the vessel for the damages sustained, and, after alleging nonresidence of all the defendants and that the vessel was about to be taken from the State of Washington to some port in the state of California, it was asked that a receiver should be appointed to take charge of the vessel pending the action. The court appointed a temporary receiver to take immediate charge of the vessel, and issued an order that the defendants should show cause why a permanent receiver should not be appointed. Before the time fixed for hearing upon the order to show cause, the defendants applied to the court for discharge of the vessel from the receivership upon their signing a bond to the plaintiff in the penal sum of \$30,000, conditioned that they would pay any judgment or claim which the plaintiff might establish in said cause of action. Such bond was given, being expressly stated therein that one of its conditions is that the personal liability of the principals and surety shall be substituted for any security which the plaintiff may have against the vessel. Whereupon the vessel was discharged from the receivership and turned over to the defendants.

The defendants thereafter demurred to the complaint, on the ground that the court has no jurisdiction of the subject-matter of the action, and also that the complaint does not state facts sufficient to constitute a cause of action. The demurrer was overruled. The defendant Hulbert was dismissed from the action, and the remaining defendants answered jointly, expressly stating that they did so without waiving their demurrer, and still insisting upon their rights as claimed under the demurrer. The answer admits that the Norwood is an enrolled vessel of about seven hundred and fifty tons gross burden, or about five hundred tons net burden; that the defendants Budden & Christenson, of San Francisco, California, are the managing owners thereof, and that the defendant Martin is the master of the vessel, but denies any negligence or liability in the premises. The affirmative allegations of the answer are very extensive and need not be enumerated at this time. It was stipulated that the cause should be tried by the court without a jury, and after such trial the court made its findings of facts and conclusions of law and entered judgment that the plaintiff shall recover from the defendants the sum of \$13,751.89, and costs. This appeal is from said judgment.

It is assigned that the court erred in holding that it had jurisdiction. The respondent contends that, for several reasons, appellants have waived this point; (1) for the reason that no exception was taken to the ruling upon the demurrer to the complaint. It is true the record does not show a formal exception entered at the time the order overruling the demurrer was made, but it does show that the

demurrer was argued by counsel, and that the court was fully advised, and later, when the answer was presented, it expressly stated in its commencing clause that the appellants answered "without waiving their demurrer herein and still insisting upon their rights as claimed under such demurrer." Furthermore, at the trial, the appellants objected to the introduction of any testimony in support of the complaint, for the reasons stated in the demurrer. This objection was overruled. It is therefore manifest from the record that appellants did not waive their objections to the jurisdiction as raised by the demurrer, and that the court was fully advised thereof before the trial began. Moreover, under our statute, 2 Bal. Code, Sec. 4911, the objection that the court has no jurisdiction may be raised "at any stage of the proceedings either in the superior or supreme court."

(2) For the reason that appellants entered their general appearance in the action. The record disclosed a notice of general appearance, filed at a time prior to the filing of the demurrer, or answer. If the question here involved were that of jurisdiction of the persons of the appellants, this point would be against them; but if, as they contend, the court had no jurisdiction of the subject-matter of the action, then no appearance they could make could confer jurisdiction. 11 Cyc. 673, 674, and cases cited. (3) For the reason that appellants gave a bond for the release of the Norwood from the hands of the receiver, and that the action then proceeded as an ordinary action at law for damages. It is true the bond stated that the obligors would pay any judgment that should be established upon respondent's cause of action mentioned in his complaint. But it was expressly stated that the personal liability was substituted "for any security or claim which the said plaintiff A. J. West may have against or in the said vessel Steamer Norwood, her tackle, apparel, furniture, engines, boilers, etc." It is therefore evident that if the court had not jurisdiction of the subject-matter of the cause of action stated in the complaint, viz., the enforcement of a lien against the vessel, it could not by virtue of the recitals in the bond enter judgment against the bondsmen whose liability was substituted for that of the vessel on condition that it should be found in said cause that the vessel itself was liable.

The objection of respondent to the consideration of the question of jurisdiction must therefore be denied, and we proceed now to the examination of that subject. It must be said that the determination of the subject is not unattended with difficulty, involving as it does an examination of the federal decisions, somewhat difficult to reconcile and apply to the facts of this case. The action was brought in the state court to enforce a lien alleged to exist by virtue of a state statute, Bal. Code, Sec. 5953, the pertinent part of which is as follows:

"All steamers, vessels and boats, their tackle, apparel, and furniture, are liable,— * * *

6. For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state.

Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel, and furniture, and have

priority in their order herein enumerated, and have preference over other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued."

The next section of the statute, Bal. Code, Sec. 5954, deals with the procedure for the enforcement of the liens. The section is as follows: "Such liens may be enforced, in all cases of maritime contracts or vice, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any district court of this territory."

It will thus be seen that, if the cause of action here is based upon maritime tort, then even the state statute requires that it shall be enforced in admiralty. We must therefore determine whether this is maritime tort or a tort not maritime in its nature. The injured property was a bridge which was suspended over navigable waters and supported by piers planted in the soil beneath such waters. The injury was caused by a moving vessel in said waters. There seems to be no doubt under the decisions that, if the injury had been to the vessel and caused by the bridge, it would have constituted a maritime tort, for the reason that the thing so injured would have been clearly maritime in its character and location. The controversy here is whether the injury to the bridge occurred upon navigable waters and as to make the tort causing it a maritime one, or whether the bridge's connection with the soil and shore rendered it such a land structure as made the injury nonmaritime. The case of *Milwaukee The Curtis*, 37 Fed. 705, decided in the year 1889 by the district court of the United States for the eastern district of Wisconsin, involved facts similar to those of this case. A lawfully constructed bridge spanned the navigable waters of the Milwaukee river. It was a swinging bridge, its centre resting upon a stone pier constructed on the bed of the river. The bridge was damaged by a vessel moving in the river. A libel *in rem* was brought in the Federal court to recover damages. The objection was made that the court was without jurisdiction of the subject-matter, and this contention was sustained, and the libel dismissed. It was said in that case:

"In cases of tort locality is the test of jurisdiction in the admiralty. The ultimate judicial authority has determined the principle that the true meaning of the rule of locality is that, although the origin of the wrong is on the water, yet, if the consummation and substance of the injury are on the land, a court of admiralty has not jurisdiction; that the place or locality of the injury is the place or locality of the thing injured, and not of the agent causing the injury."

The court held that the bridge was not upon the water because it depended in space above the water, but that it was a mere prolongation over the water of a highway upon land. The primary authority upon which the decision was based appears to have been *The Plymouth*, 3 Wall. 20. In that case, a vessel which was lying at a wharf on waters subject to admiralty jurisdiction, took fire and the fire spread to certain storehouses on the wharf, consuming the buildings and their contents. It was held not to be a case for admiralty jurisdiction. The court said:

"It will be observed that the entire damage complained of by the libellants, as proceeding from the negligence of the master and crew, and for which the owners of the vessel are sought to be charged, occurred, not on the water, but on the land. The origin of the wrong was on the water, but the substance and consummation of the injury on land. It is admitted by all the authorities, that the jurisdiction of the admiralty over marine torts depends upon locality—the high seas, or other navigable waters within admiralty cognizance; and being so dependent upon locality, the jurisdiction is limited to the sea or navigable waters not extending beyond high-water mark."

It will be observed that, in *The Plymouth, supra*, the structures injured were not in or over the water of the navigable channel, and they were held to be upon the land. In application of the reasoning of the supreme court of the United States in said cause, the Federal trial court, in *City of Milwaukee v. The Curtis supra*, seems to have been led to hold that a bridge should be classified with the warehouses on the wharf, as being upon land. In that case the court also cited in support of its decision, *Ex Parte Phenix Ins. Co.*, 118 U. S., 610, where it was held that admiralty has no jurisdiction to try the question of damage to buildings on land caused by fire communicated from the smoke-stack of a vessel. Again, in *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S., 388, the jib boom of a vessel towed by a steam tug in the Chicago river struck a building on land, causing damage to it, and the loss of shelled corn stored in it. It was held not to have been a maritime tort of which admiralty had jurisdiction. So far it will be seen that the cases decided by the Federal supreme court have involved injuries to structures wholly upon land or upon a wharf, and have not included bridges over navigable waters. The Federal trial courts have differed in their interpretation of the doctrine of *The Plymouth*, so far as it should be applied to bridges. In the case of *The Arkansas*, 17 Fed. 383, the court reasoned as follows:

"But suppose, on the other hand, the structure, whether bridge, boom, pier, or light-house be a lawful one; suppose it to be placed in the navigable bed of the river by lawful authority; and suppose some reckless mariner should carelessly run his vessel upon it and injure it; can it be doubted that the *tort* thus committed would be within the admiralty jurisdiction? Can it be doubted that in such case the owner of the structure might proceed against the owners of the boat *in personam*, or against the boat itself *in rem*? The *tort* itself would be a maritime *tort*; it would be, as to place, within the admiralty jurisdiction. The owner of the structure would have a right to proceed *in rem* against the boat, because, from its nature, a maritime lien could attach to the boat."

Again, in the case of *The F. & P. M. No. 2*, 33 Fed. 511, the court approvingly refers to *The Arkansas, supra*, as having declared the law to be,

"that where a structure lawfully created in the navigable channel of a river is injured by a collision caused by the negligent management of a vessel, the owner of such structure may proceed in an admiralty court, by action *in personam* against the owners of the vessel, or *in rem* against the vessel. If this be the law—and I have no doubt

s—no reason is perceived why the owner of a raft of logs which is in the course of transit on navigable waters, may not proceed *in rem* against a boat or vessel which negligently runs into and destroys or injures the raft.”

This is clearly a case where it is our duty to follow the doctrine of Federal decisions, and so far as the above-cited decisions are concerned, we are without any decision from the final Federal authority directly involving such a structure as a bridge over navigable waters under similar facts, and we also find the subordinate Federal courts differing as to the application that shall be made of certain decisions respecting bridges and similar structures.

The appellants urge that a later decision of the supreme court has modified and practically overruled *The Plymouth* and the other decisions. They cite *The Blackheath*, 195 U. S., 361, decided in the year 1904. In that case it was held that admiralty has jurisdiction over a libel *in rem* against a vessel for damages caused by its negligently running into a beacon in a channel, although the beacon is attached to the bottom. So far as we are advised, the above-cited case is the first one in which the Federal supreme court considered an injury caused by a vessel to a thing attached to the soil and within the channel of a navigable highway. The opinion was written by Mr. Justice Holmes, and it reviews the decisions which seem to bear in any way upon the subject-matter, including the pioneer case *The Plymouth*, which was decided in 1865. More or less weight seems to have been accorded to all of the decisions in consideration of the particular facts in each case, and no case was expressly declared to be overruled. Some expressions in the opinion seem to us to be significant. Citing with approval *The Arkansas*, *supra*, the court said:

“But as has been suggested, there seems to be no reason why the fact that the injured property was afloat should have more weight in determining the jurisdiction than the fact that the cause of the injury was. * * * And again it seems more arbitrary than rational to treat attachment to the soil as a peremptory bar outweighing the considerations that the injured thing was an instrument of navigation and no part of the shore, but surrounded on every side by water, a mere point projecting from the sea.”

Referring to the facts in the case of *The Plymouth*, the opinion says:

“Moreover, the damage was done wholly upon the mainland. It has never been decided that every fixture in the midst of the water was governed by the same rule. The contrary has been supposed in some American cases,” citing *The Arkansas* and *The F. & M. P. No. 2*, *supra*; also stating that the same “is indicated by the English books cited above.” Having thus clearly distinguished *The Plymouth* from the case then before the court, involving as the latter did a structure attached to land in the midst of the sea, the court further said:

“It is unnecessary to determine the relative weight of the different elements of distinction between *The Plymouth* and the case at bar. It is enough to say that we now are dealing with an

injury to a government aid to navigation from ancient times subject to the admiralty, a beacon emerging from the water injured by the motion of the vessel, by a continuous act beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of the sea. In such a case jurisdiction may be taken without transcending the limits of the Constitution or encountering *The Plymouth* or any other authority binding on this court."

Thus, without discussing the recognized "different elements of distinction" between the two cases, the court confines its discussion to *one* element, viz., that the beacon was a government aid to navigation and subject to admiralty. We believe, however, that views expressed in the opinion—such, for instance, as that it is more arbitrary than rational to treat attachment to the soil, which is only technically land through a connection at the bottom of the sea, as a peremptory bar outweighing other considerations—indicates that, if the injured thing had not been an aid to navigation, but was a mere lawful structure at that place, the injury to it would have been held to have been a maritime one and subject to admiralty. Our interpretation of the opinion in this regard is emphasized by the concurring opinion of Mr. Justice Brown in the same case. We here set forth the concurring opinion:

"I do not dissent from the conclusion of the court, although for forty years the broad language of Mr. Justice Nelson in the case of *The Plymouth*, 3 Wall., 20, has been accepted by the profession and the admiralty courts as establishing the principle that the jurisdiction of the admiralty does not extend to injuries received by any structure affixed to the land, though such injuries were caused by a ship or other floating body. It received the approval of this court in the case of the *Phoenix Insurance Company*, 118 U.S. 610, and in that of the *Chicago & Pacific Elevator Company*, 119 U.S. 388, and has been followed by the courts of at least a dozen different districts, and applied to bridges, piers, derricks and every other class of structure permanently affixed to the soil.

I do not think this case can be distinguished from the prior ones, as, in my opinion, it makes no difference in principle whether a beacon be affixed to piles driven into the bottom of the river or to a stone projecting from the bottom, or whether it be surrounded by twelve feet or one foot of water, or whether the injury be done to a wharf projecting into a navigable water, or to a beacon standing there, or whether the damage be caused by a negligent fire or by bad steering.

I accept this case as practically overruling the former ones, and as recognizing the principle adopted by the English Admiralty Court Jurisdiction Act of 1861 (sec. 7), extending the jurisdiction of the admiralty court to 'any claim for damages by any ship.' This has been held in many cases to include damage done to a structure affixed to the land. The distinction between damage done to fixed and to floating structures is a somewhat artificial one, and, in my view, founded upon no sound principle; and the fact that Congress, under the Constitution, cannot extent our admiralty jurisdiction,

affords an argument for a broad interpretation commensurate with the needs of modern commerce. To attempt to draw the line of jurisdiction between different kinds of fixed structures, as, for instance, between beacons and wharves, would lead to great confusion and much further litigation."

The above is an interpretation of the necessary force and scope of the main opinion by a member of the tribunal that rendered the decision and who concurred therein. It is true that the main opinion distinguishes the former cases, while the concurring opinion does not; but for reasons heretofore stated we believe the distinguishing of the former cases does not lead to a distinguishing of the facts in the case before us from the facts and argument in the decision in *The Blackheath*. Since the rendering of that decision and in the year 1906, the district court of the United States for the southern district of New York, in the case of *Bowers Hydraulic Dredging Co. v. Federal Contracting Co.*, 148 Fed. 290, expressed the view that, by the decision in *The Blackheath*, "the admiralty jurisdiction has been broadened very considerably," and that some of the artificial distinctions that have been heretofore observed as ousting the jurisdiction of admiralty cannot be observed in the future. In that case a dredge whose work was performed partly on land and partly on water was held to be within the admiralty jurisdiction, and the court on the strength of *The Blackheath* refused to follow the former decisions that would have led to a different result.

The above Federal judicial interpretations of the scope of the decision in *The Blackheath*, we believe we should follow. Especially do we believe we should do so until the final Federal authority may have more definitely stated a contrary view. We therefore believe the facts of this case bring the subject-matter within the admiralty jurisdiction. The point of the immediate contact which precipitated the injury was a pier which it is alleged lawfully stood within the channel of navigable waters. It rested upon soil, to be sure, but soil which formed the bottom of the sea and was therefore not land technically speaking. It was as much in the sea as was the beacon in *The Blackheath*. Its locality with reference to the sea was the same as the beacon, and the mere fact that it was applied to another use we believe cannot be material. Even in *The Plymouth* it will be remembered the court said that jurisdiction over maritime *torts* depends upon locality, and that, being so dependent upon locality, the jurisdiction is limited to the sea or navigable waters not extending beyond high water mark. We do not believe it will ever ultimately be held that, for the purposes of jurisdiction, a distinction must be made between a pier which stands in navigable waters and a beacon which stands in the same locality, merely because the pier supports a bridge which spans across the waters to the shore. The pier as the supporting agency, the foundation of the structure, it would seem must draw the structure to its own locality, that of the waters.

In any event, even if it shall be held that we are in error in the foregoing interpretation of the scope of Federal decisions, still there

is another element in this case which we think, within the technical distinctions which have been made in the decisions must bring the case within admiralty jurisdiction. The complaint alleges that the appellants:

"Negligently, carelessly and through failure to exercise ordinary skill in the handling, management and navigation of said vessel, ran said vessel against the supporting piers of one of the spans of plaintiff's said bridge and thereby, through the carelessness and negligence of the defendants struck, broke and injured the piers supporting the plaintiff's said bridge to such an extent that within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the said Chehalis River and was broken up and almost utterly destroyed."

It is manifest from the foregoing that at least a substantial part of the resulting injury was consummated on the very surface of and in the water itself. If the other facts discussed were not sufficient of themselves to establish a maritime locality for the resulting injury, certainly this additional circumstance must complete the chain of facts necessary to do so. If it be said that the argument upon this point is technical, it must be said in reply that very technical distinctions appear to have necessarily formed a part of the history of the law upon this subject.

The judgment is reversed, and the cause remanded with instructions to dismiss the action.

HADLEY, C. J.

Dunbar, Rudkin, Crow, Mount and Root, JJ., concur.

FULLERTON, J. (dissenting):

I dissent. I think the case falls within the rule of the case of *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S., 388, and that the tort committed is within the jurisdiction of the state courts.

(Record, page 653.)

Filed Nov. 14th, 1908.

No. 7004.

A. J. WEST, Respondent,

v.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, John Sudden, and Ed. Hulbert, Appellants.

On Rehearing.

A rehearing was granted in this cause, and argument was heard at the present term. A statement of the case may be found in the original opinion, 47 Wash. 417, to which we here refer in order to avoid repetition. The only question determined by the former opinion was that of jurisdiction. It was held that the facts brought

the case within the jurisdiction of admiralty. In view of certain discriminations which had theretofore been made in the decisions of the Supreme Court of the United States, it was believed that that tribunal would so hold should it be called upon to consider facts identical with those involved herein concerning the locality of the collision and the resulting injury. It now appears, however, that we erred in the entertainment of that view. Since our decision was rendered the Supreme Court of the United States has rendered two decisions directly involving collisions between vessels and bridges which span navigable waters.

Cleveland Terminal & Valley R. Co. v. Cleveland Steamship Co., 208 U. S., 316;
The Troy, 208 U. S., 321.

In the case first above cited the court followed what was said in *The Plymouth*, 3 Wall. 20, distinguished what was said in *The Blackheath*, 195 U. S., 361, and reached the conclusion that the locality of the collision was not maritime, for the reason that the injured structure was so connected with the shore that it immediately concerned commerce upon the land. The two cases cited were companion cases in their facts, although one was appealed from the northern district of Ohio and the other from the western district of Wisconsin. The decisions were rendered on the same day, and the decision in *The Troy* was based upon the opinion in the first case cited. So far as the question of locality is concerned these decisions are binding upon this court. In our former opinion we simply endeavored to anticipate what would be the decision of the higher tribunal in such a case, and now that we find we are mistaken, it becomes our duty to reverse our former holding upon this subject, unless a further feature suggested by appellants has the effect to establish the locality of this injury as a maritime one. We refer to the matter mentioned at the close of the former opinion where it was suggested that, inasmuch as the damage was largely effected by the action of the water after the bridge fell, the locality of the damage was for that reason a maritime one. We were of the view when that opinion was prepared that the Federal Supreme Court was disposed to give much force to the matter of locality in determining the dividing lines between admiralty jurisdiction and that of the state courts, and that very technical distinctions had been observed in order to fix the locality as being either maritime or non-maritime. The later decisions cited above seem, however, to give more force to the character of the structure colliding with the vessel, it being connected with the land or otherwise, as the determining factor, than to the mere matter of locality which was so much discussed in the earlier decisions. We therefore believe there are no facts in this case to distinguish it from the later decisions cited. So far as the matter of locality is concerned, and that upon that question the admiralty court has not jurisdiction.

The appellants further contend that the state court has no jurisdiction, for the reason that the statute invoked by respondent and cited in the former opinion is not applicable to the facts of the case at bar, and if so, that the statute is unconstitutional. It having

been determined that admiralty has not jurisdiction, then it must follow that the subject is open for state legislation, and is within the jurisdiction of the state courts. The statute, sec. 5953, Bal. Code, provides for liens upon "all steamers, vessels, and boats, their tackle, apparel and furniture." It is evidently intended to reach foreign as well as domestic vessels, and the property injured by the vessel need not necessarily be transportable, as argued by appellants. The statute is broad enough to include damage to a permanent structure like a bridge. To give it any other construction would be extremely technical and we do not think the legislature intended that a restricted or narrow meaning should be given the statute. The statute expressly provides that demands for injuries by the vessel shall constitute liens upon the vessel. Such liens created by state statutes are enforceable in the state courts when the subject matter is not within the jurisdiction of admiralty.

"The rule to be deduced from these cases, so far as they are pertinent to the one under consideration, is this, that wherever any lien is given by a state statute for a cause of action cognizable in admiralty either *in rem* or *in personam*, proceedings *in rem* to support such lien are within the exclusive jurisdiction of the admiralty courts. But the converse of this proposition is equally true, that if a lien upon a vessel be created for a claim over which a court of admiralty has no jurisdiction in any form, such lien may be enforced in the courts of the state."

Knapp, Stout & Co. v. McCaffrey, 177 U. S. 638.

The state court therefore has jurisdiction in the case at bar to enforce a lien for the damage done.

A temporary receiver was appointed by the court, and the vessel was taken in charge by him at the beginning of this action. As suggested by respondent, this was in effect an equitable attachment of the property. The appellants entered an appearance, and executed a bond for the release of the property, which bond was to the effect that appellants will pay to respondent any sum or claim which may be established in this case upon the cause of action mentioned in the complaint. The bond was like that given in the case of Johnson v. Chicago & Pacific Elevator Co., 119 U. S. 388. The court there said:

"So far, therefore, as this suit is concerned, the action in the shape in which it comes before this court, is a suit *in personam* with an attachment as security, the attachment being based on a lien given by the state statute, and a bond having been by the act of the defendant substituted for the thing attached."

The situation is analogous to that of an attachment at law where a bond for the release of the attached property has been given, conditioned for the payment of the judgment which shall be obtained in the cause. The security of the bond becomes substituted for that of the released property, and any question as to the regularity of the attachment cannot afterwards be raised.

Brady v. Onffroy, 37 Wash. 482.

hold that the statute is valid, and that the court had in all its jurisdiction to enter the judgment.

is urged by appellants that sufficient authority from the War Department of the United States to maintain the bridge was not given. We are satisfied with the showing upon that subject, and find that no error was made by the trial court in so finding.

Appellants object to the rule for measuring damages adopted by the court. They contend for the difference between the market value of the bridge before and after the injury as the true measure. It is a rule under the circumstances would be fraught with much uncertainty. The property was peculiar and local in its nature, and its market value was necessarily regulated by the amount of demand for its use by the public at that particular place, having reference to the population of the city at that time and to the probability of an increase thereof within reasonable limitations. An attempt to ascertain such a value it must be seen would have been attended with much uncertainty. Again, the damage was to a portion of the bridge only, which compelled the making of repairs before any use of it could be used. It was not an article that respondent could have sold in the market. In such case, we think the true measure of damages is the actual cost of repairing.

Jackson etc. Works v. Hurlbut, (N. Y.) 70 Am. St. 432.

is also urged that recovery of a reasonable sum as the net profits of the bridge during the time it could not be used, should have been denied. We think there was no error in this regard.

Where the natural and direct result of a tort is the interruption of an injury to an established business, there may be a recovery of profits lost during the period of enforced suspension or by reason of the tortious act."

8 Am. & Eng. Enc. Law, (2d ed.) 625.

See also *Sutherland on Damages*, (3d ed.) sec. 70.

We believe that the findings of the court are substantially supported by the testimony, and that they should not be disturbed. Judgment is affirmed.

HADLEY, C. J.

We concur:

RUDKIN, J.

MOUNT, J.

CROW, J.

DUNBAR, J.

Callerton, J., did not sit.

(Record, page 657.)

In the Supreme Court of the State of Washington.

WEDNESDAY, January 6, 1909.

No. 7004.

A. J. WEST, Respondent,

vs.

JOHN I. MARTIN et al., Appellants.

Judgment.

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Chehalis County, and upon the argument of counsel, and the Court having fully considered the same, and being fully advised in the premises, it is now, on this 6th day of January, A. D. 1909, on motion of J. C. Hogan, Esquire, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs; the petition for rehearing denied and that the said A. J. West have and recover of and from the said John I. Martin et al., and from the Metropolitan Surety Co., Surety, the sum of Thirteen Thousand and Nine Hundred & Seventy-four & 59/100 Dollars with interest thereon at 6 per cent per annum from March 26th, 1907, until paid together with the costs of this action taxed and allowed at One Hundred & Fifty-One & 00/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

(Record, page 658.)

In the Supreme Court of the State of Washington.

A. J. WEST, Respondent,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, Appellants.

Petition for Writ of Error.

To the Honorable Frank H. Rudkin, Chief Justice of the Supreme Court of the State of Washington:

The petition of John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, respectfully shows:

That heretofore, to-wit: upon the 26th day of March, 1907, there was tried in the Superior Court of the State of Washington, in and

the County of Chehalis, a case in which A. J. West was plaintiff, your petitioners were defendants.

The complaint of the plaintiff in said case was to enforce and foreclose an alleged lien upon the Steamer "Norwood", her boilers, engines, tackle, apparel and furniture, for alleged damages caused by said Steamer "Norwood" colliding against the bridge of the plaintiff, which damages were laid in the sum of Fifteen Thousand Dollars (\$15,000): it being also alleged that your petitioners are the owners of said Steamer "Norwood"; the plaintiff claiming a lien under the Statutes and Laws of the State of Washington upon the Steamer "Norwood", her boilers, engines, tackle, apparel and furniture for the said damages done to the said bridge of plaintiff. Hereafter your petitioners appeared in said cause and demurred to the said complaint of the plaintiff upon the following grounds, to-wit:

1. That the court has no jurisdiction over the subject matter of the action.

2. That the complaint does not state facts sufficient to constitute a cause of action.

3. Your petitioners show that each of said grounds of demurrer is a Federal question, namely:

First. Whether the fact alleged in the complaint, that the substance and consummation of the injury and wrong took place upon the waters of the Chehalis River, showed that it was a maritime tort within the exclusive jurisdiction of the Courts of Admiralty.

Second. Whether the Statutes and Laws of the State of Washington, namely, Sections 5953 and 5954 of Ballinger's Code, by their terms gave a lien upon the said Steamer for the wrong and injury complained of, and if so, does said Statute conflict with the Constitution and Laws of the United States.

And your petitioners alleged and contended by said demurrer in said case, that the said Superior Court of the State of Washington, in and for Chehalis County, did not have jurisdiction of the subject matter of the said suit, and that the same was within the exclusive jurisdiction of the Court of Admiralty; that the Statutes and Laws of the State of Washington, namely: Sections 5953 and 5954 of Ballinger's Code, did not contemplate a lien in this kind of case, and did not by the terms thereof give any lien upon the said Steamer for the alleged injury to said bridge; or, if it should be held by said Court that said Laws and Statutes by their terms contemplated and gave a lien in this character of a case, then that the said Statutes and Statutes were repugnant to and in violation of the Constitution and Laws of the United States, namely, Article XIV of the Amendments to the Constitution of the United States, Section 2 of Article III of the Constitution of the United States, and subdivision Section 563 of the Revised Statutes of the United States.

Your petitioners further show that the said Superior Court of the State of Washington, in and for Chehalis County, overruled and denied the said demurrer, deciding and holding that it had jurisdiction of the subject matter of said suit, and that under the allegations in the complaint, the plaintiff had a lien upon the said Steamer

for the amount of his damages by reason of the injury to said bridge, under and by virtue of the provisions of Sections 5953 and 5954 of said Ballinger's Code, and that said Statutes were not repugnant to and in violation of the Constitution and Laws of the United States.

Your petitioners further show that without waiving their demurrer, but still insisting upon their rights thereunder, and after the said court had overruled and denied the same, they filed their answer to said complaint of the plaintiff, wherein, among other things, it is denied that the said bridge was affirmatively authorized by the Honorable Secretary of War of the United States, or that the same constituted or was a lawful structure. And as affirmative defenses, among other things, it is alleged that the petitioners are residents and citizens of the City of San Francisco and State of California; that at the times mentioned in the complaint the Steamer "Norwood" was and is an ocean going vessel registered at San Francisco, in the State of California, under the navigation laws of the United States, and employed by her owners upon the Pacific Coast between the City of San Francisco and points in the State of Washington, and particularly on Grays Harbor, as a common carrier for hire; that the Chehalis River has been and now is a public navigable stream, flowing into Grays Harbor and thence into the Pacific Ocean upon which commerce is carried on in steam and sailing vessels to and from points on said river in the State of Washington to and from points in other States and foreign countries, and is a navigable river for all commercial purposes, and in which for a number of miles inland the tide ebbs and flows; that Grays Harbor is an arm of the sea, viz., the Pacific Ocean, in which the tide ebbs and flows, and which is navigable for all commercial purposes the full length of the harbor; that at or near the point of confluence of the said river with the said Grays Harbor, the bridge of the plaintiff was constructed, being about 1700 feet in length and extending across the waters of said river and harbor, and had a swinging draw span about 250 feet in length, by means of which the navigation of said river and harbor along the line of and through the said bridge is possible, but not otherwise.

It is further set forth and alleged in said affirmative defenses, that by reason of the matters and things therein alleged the said Superior Court has not jurisdiction, and ought not to enforce the claim alleged in plaintiff's complaint, against the said Steamer "Norwood," or against these petitioners, for the following reasons, to-wit:

1. Because the right of action in this case is based upon the provisions of Secs. 5953 and 5954 of Ballinger's Code and Statutes of Washington and particularly Subdivision 6 of Sec. 5953; that the right thereby created and sought to be enforced in this action by the plaintiff herein, is in violation of the 8th Section of Article I of the Constitution of the United States, which provides, among other things, as follows; to-wit:

"Congress shall have power: To regulate commerce with foreign nations and among the several States."

2. Because the enforcement of Sections 5953 and 5954 of Bal-

linger's Code and Statutes of Washington as sought by the plaintiff in this action would be to deprive the owners of the Steamer "Norwood" of their property without due process of law and without the equal protection of the law as provided by Article XIV of the Amendments to the Constitution of the United States which is as follows, to-wit:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the laws."

3. Because the enforcement in this case of plaintiff's alleged cause of action based upon said Sections 5953 and 5954 of Ballinger's Code and Statutes of Washington would be in violation of defendants' rights as expressed in Section 2 of Article III of the Constitution of the United States, as follows, to-wit:

"The judicial power shall extend to all cases of admiralty and maritime jurisdiction."

And subdivision 8 of Section 563 of the Revised Statutes of the United States, which provides that:

"The District Court shall have jurisdiction as follows: Of all civil causes of admiralty and maritime jurisdiction."

The plaintiff by his reply took issue upon the allegations of the answer that the court did not have jurisdiction, and that Sections 5953 and 5954 of Ballinger's Code *was* repugnant to and in violation of the Constitution and Statutes of the United States, but did not deny that the said Steamer "Norwood" is an ocean going vessel registered at San Francisco in the State of California under the navigation laws of the United States, and is employed by her owners upon the Pacific Coast between the City of San Francisco and points in the State of Washington and particularly on Grays Harbor, as a common carrier for hire, and that the Chehalis River is a public navigable stream flowing into Grays Harbor upon which commerce is carried in steam and sailing vessels to and from points on said river in the State of Washington to and from other States and foreign countries, and is a navigable stream for all commercial purposes, in which the tide ebbs and flows, and that Grays Harbor is an arm of the sea, or Pacific Ocean, in which the tides ebb and flow, and is navigable for all commercial purposes the full length of the harbor; and that at or near the confluence of the said river with Grays Harbor the bridge of the plaintiff was constructed; that it was about 1700 feet in length and extends across the waters of said river and harbor; and has a swinging draw span about 250 feet in length by which navigation of said river and harbor is made possible, but not otherwise.

And your petitioners at the trial of said cause contended that said Court did not have jurisdiction, as alleged and set forth in said answer and said Court decided against your petitioners on their said contention and held that it had jurisdiction of the subject matter of said suit, and rendered judgment against them for the sum of \$13,751.89 and costs. That thereupon your petitioners duly accepted to the decision and findings of said Court and, thereafter, duly

appealed to the Supreme Court of the State of Washington, and assigned, among others, the following errors:

1st. Error in overruling petitioners' demurrer to the complaint.

(a) On the question of jurisdiction; and

(b) On the question of lien.

2nd. Error in finding that the bridge in question had been erected, maintained and operated under the authority of the Honorable Secretary of War of the United States.

At the October Term, 1908, of the Supreme Court of the State of Washington, the said cause came on to be heard, and was argued in the said Supreme Court, and on the — day of January 1909, the said Supreme Court of the State of Washington rendered its final judgment affirming the judgment of the court below, viz., the Superior Court of the State of Washington, in and for the County of Chehalis.

Your petitioners further show that said judgment of said Supreme Court was and is a final judgment in the highest court of the State of Washington in which a decision in said suit could or can be had.

Your petitioners further show that a Federal question was made in said case, to-wit, as hereinbefore set out, and that said judgment of said Supreme Court was repugnant to and in conflict with the Constitution and Laws of the United States, and that a decision of said Federal question was necessary to the judgment rendered.

And your petitioners claim the right to remove said judgment to the Supreme Court of the United States by Writ of Error under Section 709 of the Revised Statutes of the United States, on the grounds and for the reasons aforesaid, as appears by the record in said cause, which is herewith submitted.

Wherefore, Your petitioners pray the allowance of a Writ of Error, returnable into the Supreme Court of the United States, and for citation and supersedeas, that the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment aforesaid of the said Supreme Court of the State of Washington be reversed.

TRUMBULL & TRUMBULL,

Attorneys for Petitioners.

Let the writ of error issued as prayed.

Dated January 28, A. D. 1909.

FRANK H. RUDKIN,

Chief Justice.

Endorsed: No. 7004. A. J. West, Respondent, vs. John I. Martin et al. Appellants. Petition for Writ of Error. Filed Jan. 28, 1909. C. S. Reinhart, Clerk.

(Record, page 664.)

In the Supreme Court of the State of Washington.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, Plaintiffs in Error.

vs.

A. J. WEST, Defendant in Error.

Assignment of Errors.

Comez now the above named Plaintiffs in error, and respectfully submit that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Washington, in the above entitled matter, there is manifest error in this, to-wit:

I.

The Supreme Court of the State of Washington erred in holding that the Superior Court of the State of Washington in and for Chehalis County had jurisdiction of the subject matter of this action, and that said Superior Court did not err in overruling and denying the demurrer of plaintiffs in error to the complaint of defendants in error, and in holding that the Courts of Admiralty of the United States had not exclusive jurisdiction of the cause of action alleged, and that such assumption of jurisdiction by said Superior Court was not in conflict with Section 2 of Article III of the Constitution of the United States, to-wit:

"The judicial power shall extend to all cases of Admiralty and maritime jurisdiction."

and subdivision 8 of Section 563 of the Revised Statutes of the United States, to-wit:

"The District Court shall have jurisdiction as follows: of all civil causes of admiralty and maritime jurisdiction."

in this, to-wit:

1st. In holding and deciding that the allegations of paragraph three of the complaint of the defendant in error, (plaintiff and respondent below), that the collision between the Steamer "Norwood" and the bridge of the defendant in error "broke and injured piers supporting the plaintiff's said bridge to such an extent that within a few hours thereafter one of the spans of the plaintiff's said bridge collapsed and fell into the waters of the said Chehalis River, and was broken up and almost utterly lost," did not show that the cause of action was one within the exclusive jurisdiction of the Courts of Admiralty of the United States, and that the State Courts did not have jurisdiction.

2nd. In holding that the character of the structure colliding with the vessel, as to its being connected with the land or otherwise, was the sole determining factor as to jurisdiction, without regard to the

locality of the substance and consummation of the wrong complained of.

II.

The Supreme Court of the State of Washington erred in holding that the statute invoked by defendant in error, namely, Sections 5953 and 5954 of Ballinger's Code and Statutes of Washington, is applicable to the facts in this case, in this, to-wit:

1st. That said statute was not intended to and does not include in its terms injuries to a fixed structure like a bridge.

2nd. That said statute was not intended to and does not give a lien on foreign vessels engaged in interstate commerce.

III.

That the interpretation and construction placed upon said statute 5953 and 5954 of Ballinger's Code and Statutes of Washington by the Supreme Court of the State of Washington, in holding and deciding that said statute of the State of Washington gave a lien upon a foreign vessel engaged in interstate commerce for injuries to a permanent structure like a bridge, which may be enforced in the State Courts, is an interference with foreign and interstate commerce, and is repugnant to and in conflict with the Constitution and Laws of the United States, and especially with Section 8 of Article I of the Constitution of the United States, which provides, among other things, as follows:

"Congress shall have power: To regulate commerce with foreign nations and among the several States."

IV.

That the interpretation and construction placed upon said statute 5953 and 5954 of Ballinger's Code and Statutes of Washington, by the Supreme Court of the State of Washington in holding and deciding that said statute of the State of Washington gave a lien upon a foreign vessel engaged in interstate commerce for injuries to a fixed and permanent structure like a bridge, would be to deprive the owners of the Steamer "Norwood" of their property without due process of law, and without the equal protection of the law, and is repugnant to and in conflict with the Constitution and laws of the United States, and especially with Section 1 of Article XIV of the Amendments to the Constitution of the United States, which declares that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction equal protection of the laws."

V.

The Supreme Court of the State of Washington erred in affirming the judgment and decision of the said Superior Court of the State of Washington in and for Chehalis County, in denying the motion of the plaintiffs in error, at the conclusion of the trial, for a judgment

pon the evidence offered and submitted, for the reason that it appeared from said evidence and the admissions of the pleadings that the substance and consummation of the wrong and injury complained of was in and upon the waters of the Chehalis River, a public navigable stream upon which commerce is carried in steam and sailing vessels to and from points on said river in the State of Washington, to other States and foreign countries, and that it appeared that it was not a case within the jurisdiction of the said court, but wholly within the jurisdiction of the Courts of Admiralty of the United States.

VI.

The said Supreme Court of the State of Washington erred in its judgment in holding that there was not error in the finding of the court below that the said bridge alleged to have been injured was affirmatively authorized by the Honorable Secretary of War of the United States, and that the same constituted and was a lawful structure across the said Chehalis River, for the reason that the evidence failed to show any authority from the Honorable Secretary of War of the United States, or from the United States, to the defendant in error, to construct, operate or maintain said bridge, but on the contrary, showed that the said bridge was an obstruction and hindrance to the free navigation of said river, and a nuisance.

Plaintiff in error says that in the aforesaid suit there was drawn in question the aforesaid provisions of the Constitution of the United States and of the Acts of Congress, and the jurisdiction and right of the said Superior Court of the State of Washington in and for Chehalis County, to intertain, hear and determine the said cause under the laws of the United States, and that said decision of the Supreme Court of the State of Washington was in favor of the jurisdiction and power of the said Superior Court, and adverse to the Constitution and Statutes of the United States aforesaid.

Wherefore, the said plaintiffs in error prays that the judgment and decision aforesaid may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by the action and because of the said judgment and decision.

TRUMBULL & TRUMBULL,
Attorneys and Counsel for Plaintiffs in Error.

Endorsed: No. 7004. Capt. John I. Martin et al., Plaintiffs in Error, vs. A. J. West, Defendant in Error. Assignment of Errors. Filed Jan. 28, 1909, C. S. Reinhart, Clerk.

(Record, page 668.)

In the Supreme Court of the State of Washington.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden,
Plaintiffs in Error,

vs.

A. J. WEST, Defendant in Error.

Know all men by these presents, That we, Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, as Principals, and United Surety Company, as Surety, are held and firmly bound unto A. J. West, Defendant in Error, in the sum of Thirty Thousand Dollars (30,000), to be paid to the said obligee, his successors, representatives, and assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of January, A. D. 1909.

Whereas, the above-named Plaintiffs in error have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the Supreme Court of the State of Washington:

Now, therefore, The condition of this obligation is such that if the above-named Plaintiffs in error shall prosecute their said writ of error to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN I. MARTIN,
SUDDEN & CHRISTENSON,
CHARLES E. SUDDEN,
E. A. CHRISTENSON,
ROBERT SUDDEN, AND
JOHN H. SUDDEN,

Principals,

By JOHN TRUMBULL,

Their Attorney.

UNITED SURETY COMPANY,

By ————

UNITED SURETY COMPANY,

By SAMUEL L. RUSSELL,

Resident Vice-President.

Attest:

C. H. FARRELL,

Resident Assistant Secretary.

[Seal of United Surety Company.]

Signed, Sealed and Delivered in the Presence of:
JNO. TRUMBULL.

STATE OF WASHINGTON,

County of King, ss:

On this 29th day of January, 1909, personally appeared before me, John Trumbull, who, being duly sworn, deposes and says: That he is a member of the firm of Trumbull & Trumbull and one of the attorneys for the Plaintiffs in Error above named; That he, as such attorney, is authorized by the said Plaintiffs in Error to sign their names to the foregoing Bond for them and in their behalf; and that he, as such attorney, did execute such bond freely and voluntarily by signing the names of the Plaintiffs in Error, as Principals therein; That all of said Plaintiffs in Error are non-residents of the State of Washington and reside in the City of San Francisco, State of California.

JNO. TRUMBULL.

Subscribed and sworn to before me this 29th day of January, 1909.

[NOTARIAL SEAL.]

H. BALLINGER,

*Notary Public in and for the State of
Washington, Residing at Seattle.*

STATE OF WASHINGTON,

County of King, ss:

On this 29th day of January, A. D. 1909, personally appeared before me Samuel L. Russell, who, being duly sworn, deposes and says: That he is the resident Vice President of the United Surety Company of Baltimore; that the seal affixed to the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that the said Samuel L. Russell acknowledged the said instrument to be the free act and deed of said corporation by authority of its Board of Directors, and the said Samuel L. Russell acknowledged the said instrument to be the free act and deed of said corporation.

SAMUEL L. RUSSELL.

Subscribed and sworn to before me this 29th day of January, 1909.

JNO. TRUMBULL,

[NOTARIAL SEAL.]

*Notary Public in and for the State of
Washington, Residing at Seattle.*

I hereby approve the foregoing bond and sureties, this 30th day of January, 1909.

FRANK H. RUDKIN,

*Chief Justice of Supreme Court of the
State of Washington.*

Endorsed: No. 7004. John I. Martin et al., plaintiff in Error, vs. A. J. West, defendant in error. Supersedeas Bond. Filed Feb. 1, 1909. C. S. Reinhart, Clerk.

(Record, page 671.)

In the Supreme Court of the State of Washington.

A. J. WEST, Respondent,

vs.

Captain JOHN I. MARTIN, SUDDEN & CHRISTENSON, CHARLES E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, Appellants.

Order Granting Writ of Error.

Now on this 28th day of January, A. D. 1909, on hearing read the petition of Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, the defendants and appellants in the above entitled action, praying for the allowance of a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Washington, and it appearing by said petition and by the record in the above entitled case that said case is a proper case for the allowance of said Writ, now therefore, it is

Ordered by the undersigned, the Chief Justice of the Supreme Court of the State of Washington, that said Writ be allowed, and the same is hereby allowed accordingly, and the said Petitioners, being the Appellants above named, are ordered to execute to A. J. West, the above named Appellant, a bond with sufficient sureties thereon, to be approved by the undersigned, in the sum of Thirty-thousand (30,000) dollars *Dollars*, and said bond when so executed and approved by the undersigned shall operate as a supersedeas bond in said action, and thereupon all further proceedings upon the judgment rendered by this court in said action shall be stayed pending the hearing and determination of said Writ of Error by the United States Supreme Court.

Dated January 28, 1909.

FRANK H. RUDKIN,

*Chief Justice of the Supreme Court of the
State of Washington.*

Endorsed: No. 7004. A. J. West, Respondent, vs. John I. Martin et al., appellants. Order granting Writ of Error. Filed Jan. 28, 1909. C. S. Reinhart, Clerk.

(Record, page 672.)

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of judgment, of a plea which is in the said Supreme Court of the State of Washington before you, or some of you, being the highest court

law or equity of said State in which a decision could be had in the said suit between A. J. West, Plaintiff, and Respondent in said Court, and Defendants in error in this Court, and Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden, Defendants and Appellants in said Court, and plaintiffs in error in this Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of said Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden, and John H. Sudden, as by their complaint appears, we being willing that error, if any hath been, should be fully corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 31st day of March, A. D. 1909, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this first day of February in the year of our Lord one thousand nine hundred and nine.

[SEAL.]

A. REEVES AYRES,

*Clerk of the Circuit Court of the United States
for the Western District of Washington,*

By SAM'L D. BRIDGES, *Deputy.*

Allowed by

FRANK H. RUDKIN,

*Chief Justice of the Supreme Court
of the State of Washington.*

(Endorsed:) No. 7004. Dept. No. —. In the Supreme Court of the United States. J. I. Martin et al., Plaintiffs in Error, vs. A. J. West, Defendant in Error Writ of Error. Filed Feb. 2, 1909. C. S. Reinhart, Clerk. Trumbull & Trumbull, Attorneys for Plaintiffs in Error, 708 American Bank Building, Seattle, Washington.

(Record, page 676.)

UNITED STATES OF AMERICA, ss:

To A. J. West, Greeting:

You are cited and admonished to appear at the Supreme Court of the United States, at Washington, on the 31st day of March, A. D. 1909, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Washington, wherein Captain John I. Martin, Sudden & Christenson, Charles E. Sudden, E. A. Christenson, Robert Sudden and John H. Sudden are the Plaintiffs in Error, and you are the defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiffs in Error, as in the said Writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of January, A. D. 1909.

FRANK H. RUDKIN,
Chief Justice of the Supreme Court
of the State of Washington.

Service on Defendant in Person.

STATE OF WASHINGTON,
County of Chehalis, ss:

I, Ed Payette, Sheriff of Chehalis County, do hereby certify that I received the annexed citation on the 25th day of February, 1909, and personally served the same on the 26th day of February, 1909, on A. J. West, he being the person cited in said citation, by delivering to and leaving with him personally, in Chehalis County, a certified copy of said citation.

Dated this 27th day of February, 1909.

ED PAYETTE, *Sheriff*,
By ———, *Deputy*.

Sheriff's Fees.

Service	\$.60
Mileage 24	2.40
Total	<u>\$3.00</u>

(Endorsed:) No. 7004. Dept. No. —. In the Supreme Court of the State of Washington. John I. Martin et al., Plaintiffs in Error, vs. A. J. West, Defendant in Error. Citation. Filed Mar. 2, 1909. C. S. Reinhart, Clerk. Trumbull & Trumbull, Attorneys for Plaintiff in Error. 708 American Bank Building, Seattle, Wash.

(Endorsed:) Received Feb. 2, 1909. Sheriff's Office Chehalis Co., Wash.

* * * * *

IN THE
Supreme Court of the United States

OCTOBER TERM, 1909.

JOHN I. MARTIN <i>et al.</i> , Plaintiffs in Error, vs. A. J. WEST.	}	No. 418.
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WRIT OF ERROR TO THE SUPREME COURT OF WASHINGTON.

MOTION TO DISMISS OR AFFIRM.

Comes now the defendant, A. J. West, by his counsel, and respectfully moves this Honorable Court to dismiss the writ of error herein for want of jurisdiction, because no Federal question is presented, or to affirm the judgment below because the writ of error is merely for the purpose of delay and is, within the contemplation of the rules, frivolous.

Respectfully submitted,
W. C. KEEGIN,
Attorney for Defendant in Error.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

STATEMENT.

This case arose under Sections 5953 and 5954 of Ballinger's Code and Statutes of the State of Washington, and was commenced on May 9, 1906, in the Superior Court for Chehalis County, State of Washington, on the complaint of A. J. West, defendant in error here. As stated in the decision of the Supreme Court of the State, the purpose of the action is to recover damages alleged to have been sustained by the complainant on account of a collision between the Steamer Norwood and a bridge owned and operated by the complainant across the Chehalis River in the State of Washington. It was alleged in the complaint that the Norwood was an enrolled vessel, the owners and managing owners of which were residents of the State of California, and that the bridge which was injured by the collision was the property of the complainant below; that said bridge was a combination steel and wooden bridge, and, with the approaches belonging to the same, extended across the Chehalis River between the towns of Aberdeen and South Aberdeen, in Chehalis County, State of Washington; that on May 7, 1906, the bridge was being used by the complainant as a toll bridge for the passage of passengers, street cars and other traffic, from which he derived a monthly revenue of from \$800 to \$1,000; that the bridge was duly authorized by and under the authority of the Secretary of War, and was a lawful structure in a navigable stream; that it was provided with a large swinging span, which was opened by revolving the same upon a central pier constructed in the channel of the river, so that the bridge when opened afforded two passageways about 125 feet in width on each side of the central pier, for the passage of vessels up and

down the river. It was further alleged that on May 7, 1906, the respondents below, plaintiffs in error here, were operating the Steamer Norwood upon said river, and that while they were engaged in passing the vessel through the draw of said bridge, they negligently ran her against the supporting piers of one of the spans of the bridge, thereby injuring the piers to such an extent that within a few hours thereafter one of the spans fell into the river and was broken up and almost entirely destroyed. It was claimed that because of said collision and of the reasons therefor complainant was entitled to a lien upon the vessel for the damages sustained, and after alleging non-residence of all the defendants and that the vessel was to be taken away from the State of Washington to some port in the State of California, it was asked that a receiver should be appointed to take charge of the vessel pending the action. A temporary receiver was accordingly appointed to take immediate charge of the vessel, and the Court issued an order that respondents should show cause why a permanent receiver should not be appointed, but prior to the time fixed for hearing upon said order to show cause the respondents applied to the court for discharge of the vessel from receivership upon their signing a bond in the sum of \$30,000.00, conditioned upon their payment of any judgment or claim which the complainant might establish, the bond to be given with an express stipulation therein that one of its conditions was that the personal liability of the principals and surety should be substituted as security for any claim the complainant might have against the vessel. Pursuant to the giving of such a bond the vessel was discharged from receivership and turned over to the respondents.

The complaint was subsequently demurred to on the ground that the Superior Court for Chehalis County had no jurisdiction over the subject matter of the action, and also because the complaint did not state facts sufficient to

constitute a cause of action. The demurrer was overruled, and thereafter the defendants answered, expressly reserving all rights under their demurrer and again claiming that said court did not have jurisdiction because the right created and sought to be enforced under Sections 5953 and 5954, aforesaid, of Ballinger's Code, was in violation of that part of the Constitution of the United States which provides that Congress shall have power to regulate commerce with the foreign nations and among the several states. It was also set up in the answer that the enforcement of said sections would result in depriving the owners of the steamer of their property without due process of law and the equal protection of the law contrary to the Constitution. The answer further contended that the enforcement of said sections of Ballinger's Code would be in violation of respondent's rights within the meaning of Section 2 of Article 3 of the Constitution, which provides that the judicial power shall extend to all cases of Admiralty and maritime jurisdiction, as well as Section 563, U. S. Revised Statutes, providing that the District Courts of the United States shall have jurisdiction of all civil cases of admiralty and maritime jurisdiction.

The issue having been joined by the reply of the complainant, the case was, by stipulation of the parties, tried before the Court without a jury, and a large mass of testimony was introduced, as shown in the large manuscript record before this court, but eliminated from the printed transcript because it is assumed that this court, under repeated rulings, will not review the facts as found by the Supreme Court of the State. As a result of the trial the Superior Court of Chehalis County held that it had jurisdiction over the subject matter of the action, and that the question to be determined was, the fact of the collision by the ship with the bridge having been admitted, who was

guilty of the negligence which caused the collision? It then finds that the evidence is very conflicting, but that the weight of it is with the complainant, and judgment in his favor was accordingly awarded for the sum of \$10,-511.89, which was found to be the actual cost of reconstructing the bridge in as good condition as when it was struck by the steamer, in addition to the sum of \$3,240.00 for loss of income to the complainant as owner of the bridge for the time that the bridge was down, making a total of \$13,751.89, together with the costs of action, assessed at \$220.70. Subsequently the court, on motion of respondents, retaxed the costs and struck from the original assessment \$63.70, thus reducing the costs to the extent of the latter amount.

Respondents below, plaintiffs in error here, appealed to the Supreme Court of the State of Washington, resulting in the reversal of the judgment of the Superior Court and dismissal of the case, on the ground that said court had no jurisdiction, the cause of action being held to lie in admiralty, and thus within the jurisdiction of the United States District Court. (47 Wash., 417; 92 Pac. Rep., 334.)

The appeal from the decision of the Superior Court was in general terms, without any special assignment of errors, and in respondents formal and specific exceptions and objections, filed after the decision and prior to their appeal to the State Supreme Court, there are but two questions raised that contain even color of Federal nature, to wit, the first exception relative to the jurisdiction of the court because of the alleged maritime character of the action, and in paragraph 5 of "Exceptions to Negative Acts," where exception is noted to the omission of the trial court to declare unconstitutional Sections 5953 and 5954 of Ballinger's Code of Washington Statutes, insofar as the statute attempted to create liens against vessels engaged in interstate commerce. As these were the only questions possibly savoring of a Fed-

eral character raised before the State Supreme Court by plaintiffs in error, and consequently possible of decision by that court against their claim of right, they are the only questions which, under any circumstance, could be reviewed here if they are so involved as to confer jurisdiction.

The State Supreme Court, on rehearing (97 Pac. Rep., 1102), vacated its former decision and held that the lower court had jurisdiction of the cause of action, whereupon it considered the case on the merits and affirmed the judgment below, basing its last decision, as to the jurisdiction of the State courts, on the then lately rendered decisions by this Honorable Court in the cases of *Cleveland Terminal & Valley Railroad Company vs. Cleveland Steamship Company* (208 U. S., 316), and *Duluth & Superior Bridge Company vs. Steamer "Troy," Ibid.*, 321, which were regarded by said court as conclusive of the question.

Respondents then petitioned for writ of error to this court, and the petition having been allowed the case is brought here for consideration. The assignments of error in support of the writ are: (1) That the Supreme Court of the State erred in the holding that the State courts had jurisdiction of the subject matter of the action, and in not holding that the controversy was one within the exclusive jurisdiction of the Admiralty courts of the United States; (2), That the Supreme Court of the State erred in holding that the statutes of the State, under which the action was brought, do not include within their terms injuries to a fixed structure like a bridge, and were not intended to and do not give a lien on foreign vessels engaged in interstate commerce; (3) That the interpretation and construction placed upon the State statutes referred to, in giving a lien upon a foreign vessel engaged in interstate commerce for injuries to a permanent structure like a bridge, enforceable in the State courts, is an interference with foreign and in-

terstate commerce and is repugnant to and in conflict with Sec. 8 of Article 1 of the Constitution of the United States, providing that Congress shall have power to regulate commerce with foreign nations and among the several States; (4) That the interpretation and construction placed by the State court upon the State statutes in question deprives the owners of the Steamer Norwood of their property without due process of law and without equal protection of the law within the purview of Sec. 1 of Article 14 of the Amendments of the Constitution of the United States; (5) That the Supreme Court of the State erred in affirming the judgment and decision of the Superior Court for Chehalis County in denying the motion of plaintiffs in error, respondents below, at the conclusion of the trial for a judgment upon the evidence offered and submitted, because it appeared from said evidence that the substance and consummation of the wrong and injury complained of was in and upon the waters of the Chehalis River, a public navigable stream in which commerce is carried in steam and sailing vessels to and from points on said river in the State of Washington to other points and foreign countries, and that therefore the case was not within the jurisdiction of the State courts but wholly within the jurisdiction of the courts of Admiralty of the United States; (6) That the Supreme Court of the State erred in holding that there was not error in the finding of the court below that the bridge alleged to have been injured was affirmatively authorized by the Secretary of War, and that the same constituted and was a lawful structure across the Chehalis River.

For the convenient reference and full information of the court in considering this motion, defendant in error here, has applied for printing of the essential parts of the record, including all pleadings, but excluding the testimony.

ARGUMENT.

It appears from the foregoing statement of facts, and from the decisions of the Supreme Court of the State, that the primary question for consideration here relates to the jurisdiction of this court, to wit, whether the cause of action is one that gave jurisdiction to the State court, or was a maritime tort within the exclusive jurisdiction of the admiralty courts of the United States. As we view it, that question is also the controlling one, for if, as held by the courts of the State, they had jurisdiction over the subject matter of the action, and the Admiralty Courts of the United States did not, it must follow that the decision below is final, because it rested on questions of local law or general jurisprudence, and did not necessarily involve decision on any Federal question that is reviewable here.

In the case of Cleveland Terminal & Valley Railroad Company vs. Cleveland Steamship Company (208 U. S., 316), which involved a libel *in rem* in a United States court against a steam vessel because of injuries inflicted to a central pier or draw bridge across the Cuyahoga River, a navigable stream at Cleveland, Ohio, and to the protecting piling work surrounding such pier, as well as the shore abutments of the bridge and to a dock or wharf below the bridge, this court held that a court of admiralty has no jurisdiction of such a case, saying that:

"In the present case damage to shore dock, and to bridge, protecting piling, and pier, by a vessel being forced against each of them by the vessel proceeded against, as well as damage to shore dock, abutment, protection piling, pier and dock foundation by a wash said to be due to the increased current arising from partial damming of the stream by the three vessels, brought into such position by the alleged fault of the vessel proceeded against, was sought to be recovered.

But the bridges, shore docks, protection piling, piers, etc., pertained to the land. They were structures connected with the shore and immediately concerned commerce upon land. None of these structures were aids to navigation in the maritime sense, but extensions of the shore and aids to commerce on land as such.

"The proposition contended for is that the jurisdiction of the admiralty court should be extended to 'any claim for damages for any ship,' according to the English statute; but we are not inclined to disturb the rule that has been settled for so many years, because of some supposed convenience."

The rule referred to by the court was announced in the case of *Johnson vs. Chicago & Pacific Elevator Company* (119 U. S., 388), which was an action in the State courts of Illinois, under statutes of that State similar to those under consideration in the case at bar, and wherein it appeared that the jib-boom of a vessel towed by a steam tug in the Chicago River at Chicago, collided with a building on land adjacent to the river, through the negligence of the tug, which caused damage to the building and to property stored therein that fell into the river. In that case it was urged, as in the present case, that the cause of action was a maritime tort within the exclusive jurisdiction of admiralty court of the United States, but this contention was rejected by the court, Mr. Justice Blanchford saying:

"Under the decisions of this court in the *Plymouth* and in *ex parte Phoenix Insurance Company*, at the present term, it must be held that the cause of action in this case was not a maritime tort of which a District Court of the United States, as a court of admiralty, would have jurisdiction; and that the remedy belonged wholly to a court of common law; the substance and consummation of the wrong having taken place on land, and not on navigable water, and the cause of action not having been complete on such water.

This being so, no reason exists why the remedy for the wrong should not be pursued in the State court, according to the statutory method prescribed, even though that law gives a lien on the vessel."

In the case of Duluth and Superior Bridge Company vs. Steamer Troy (208 U. S., 321), this court specifically held that redress cannot be afforded in admiralty for injuries inflicted by a colliding vessel upon the draw of a bridge over a navigable stream and to its center pier protection. The latter case was a proceeding in libel *in rem*, instituted in a maritime court of the United States, which proceeding was dismissed by the lower court for want of jurisdiction, and that dismissal was affirmed by this court.

That the State courts have jurisdiction of actions arising under analogous statutes to those on which the case at bar depends, was also held by this court in the following cases, where the validity of such statutes is fully discussed, viz.:

Knapp, Stout & Co. vs. McCaffrey (177 U. S., 638).
Iroquois Transportation Co. vs. De Laney (205 U. S., 354).

In view of these decisions it would seem clearly apparent that the decisions of the courts of the State of Washington in the case at bar were duly rendered by tribunals vested with jurisdiction, and that therefore the decision of the Supreme Court of that State is final, and cannot be reviewed here, unless it is shown that a substantial Federal question was necessarily involved in the decisions of the State courts; for, as was stated by this Court in the case of Western Union Telegraph Company vs. Wilson, decided at the last term (213 U. S., 52):

"This case comes here from a State court, and, of course, therefore, it must appear that a Federal question necessarily was involved in the decision before

this court can take jurisdiction or undertake to reverse the judgment of a tribunal over which it has no general power. It is not enough that a right under the Constitution of the United States was specially set up and claimed. It must be made manifest either that the right was denied in fact, or that the judgment could not have been rendered without denying it," citing numerous authorities.

There must be a real, substantial, and not a fictitious Federal question, and a mere averment of a Federal question is not sufficient, as has been often declared by this court.

"In order to sustain the jurisdiction of this court upon the ground that a Federal question is presented, it should appear either that such question was apparent in the record and that a decision was made thereon, or that, from the facts stated, such question must have arisen, and been necessarily involved in the case.

"If it appear either that the decision of the State court was made upon rules of general jurisprudence, or that the case was disposed of on other grounds, broad enough in themselves to sustain the judgment without considering the Federal question, and that such question was not necessarily involved, the jurisdiction of this court will not attach."

City of New Orleans vs. New Orleans Water Works Company (142 U. S., 79);

Hamblin vs. Western Land Company (147 U. S., 531);

Millinger vs. Hartupee (6 Wall., 258).

In case of *Arkansas Southern Railroad Co. vs. German National Bank* (207 U. S., 270), a writ of error to a State court was dismissed, notwithstanding objections of repugnancy of a State statute to the Federal Constitution. After referring to the statute there involved, having reference to the transfer of bills of lading, carrying therewith a lien on the produce for which they are given, the court said (page 275):

"It is argued further that the sections, so far as they bear on these transactions, are repugnant to the Constitution, Article I, Sec. 8, as an unauthorized attempt to regulate commerce among the States, and this is the error relied upon here, although by no means the only one assigned.

"But, according to the well settled doctrine of this court with regard to cases coming from State courts, unless a decision upon a Federal question was necessary to the judgment, or in fact was made the ground of it, the writ of error must be dismissed. And even when an erroneous decision upon a Federal question is made a ground, if the judgment also is supported upon another which is adequate by itself, and which contains no Federal question, the same result must follow, as a general rule. Moreover, ordinarily this court will not inquire whether the decision upon the matter not subject to its revision was right or wrong. * * * Therefore, if we should be of opinion, as we are, that the Supreme Court rested its judgment upon principles of common law as it understood them, we should go no farther, although that court also upheld and relied upon the statutes, whether, in our opinion, its views were right or wrong."

While plaintiffs in error have in their assignments of error variously and somewhat numerously asserted Federal or Constitutional rights or privileges, we do not think they can by mere assertion put themselves without the doctrine of the decisions herein cited, nor thereby give color to Federal questions not substantially or necessarily involved. As we read and understand the last decision of the Supreme Court of the State, no Federal question was necessarily involved or necessary to be decided, unless it be the one appertaining to the validity of the State statutes so far as they give jurisdiction to the State courts, but the decisions of this court, cited in the decision of the State Supreme Court, conclusively settle

that question. Believing that no reviewable Federal question is properly before this court, and that the decision below is final, we submit that the writ of error should be dismissed.

II.

But even if it be held that this court has jurisdiction, we submit that the judgment of the Supreme Court of the State of Washington should be affirmed under paragraph 5 of Rule 6 of Practice, because it is manifest that the writ of error was taken for delay, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

Church vs. Kelsey (121 U. S., 282);

E. T. V. & G. R. Co. vs. Frazier (139 U. S., 288).

Chanute vs. Trader (132 U. S., 210).

In the case of East Tennessee, V. & G. Railway Co. vs. Frazier, *supra*, the court held that where the record presents a Federal question, but that question was not the principal matter litigated, but was put in the record for the purpose of getting the case to the Federal Supreme Court, there is color for motion to dismiss, and while the court did not grant that motion, it did favorably consider the alternative motion to affirm.

In Swope vs. Leffingwell (105 U. S., 3), there was a motion to affirm united with a motion to dismiss a writ of error to a State court. The motion to dismiss was based on the ground that no Federal question was involved. The court held that it had jurisdiction, but affirmed the judgment on the ground that the case on the merits was governed by *previous decisions*. We contend that the latter conditions exist here.

The statutes of the State of Washington under which

the present action was instituted are Sections 5953 and 5954 of Ballinger's Code, as follows:

"5953. All steamers, vessels, and boats, their tackle, apparel and furniture are liable * * * * *

"6. For injuries committed by them to persons or property within this State, or while transporting such persons or property to or from this State. * * *

"Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued."

Sec. 5954 provides that—

"Such liens may be enforced, in all cases of maritime contracts or service by a suit in admiralty, *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any District Court of this Territory."

The liability thus created on the part of vessels for injuries committed by them to property within the State was unquestionably within the power of the State legislature.

In the case of the *Roanoke* (189 U. S., 185), this court had occasion to consider certain provisions of said Sec. 5953, not in any way involved in the present case, and held the statute to be unconstitutional so far as it created a preferred lien on ocean-going vessels owned in other States or countries for work done and materials furnished on the order of a contractor, though such contractor has been paid in full by the owner without knowledge of any unpaid claims; but the court in the concluding paragraph of its de-

cision limited its holding to said effect to the statute "so far as it attempts to control the administration of the maritime law by creating and superadding conditions for the benefit of a particular class of creditors, and thereby depriving the owners of vessels of defenses to which they would have been otherwise entitled."

Obviously the statute was not held unconstitutional *in toto*, nor is that part of the statute which we are now considering under the facts in this case, where the lien or substituted security therefor is non-maritime in character, affected by said decision. Moreover, the validity of said statute has been recognized by the United States District Judge for the State of Washington, as well as by the Circuit Court of Appeals for that Circuit, subsequent to the decision in the case of the Roanoke, *supra* (see the *Energia*, 124 Fed. Rep., 840, and *Guffey vs. A. & P. S. S. Co.*, 130 Fed. Rep., 278), and many States have statutory enactments similar to said Section 5953, which have been upheld.

Olsen vs. Birch & Company (133 Cal., 479).

The Victorian (24 Oregon, 121).

Globe Iron Works vs. Steamer (100 Michigan, 583).

Scattered Lumber Company vs. Rike (113 Alabama, 555).

Reynolds vs. Nelson (116 Wis., 483 and authorities therein referred to).

Atlantic Works vs. Tug Glide (157 Mass., 525).

In strictness the plaintiffs in error should be held to be estopped from raising questions as to the existence or non-existence of a lien on their vessel, or as to the validity of the State Statute providing for such lien, because the bond voluntarily given by them shortly after the institution of these proceedings, and the consequent release of the vessel from the hands of the Receiver, thus substituting the bond

as security for any damages accruing to the complainant below, defendant here, made the suit one *in personam*, plainly subject to State laws and decisions; but it is not necessary to press this point, in view of decisions by this court on the merits of plaintiff's contentions. These decisions having been so oft-repeated at intervals during many years that they have in effect established a rule not open to challenge, and, as we view it, therefore furnish warrant for this motion to affirm, within contemplation of the decision in *Swope vs. Leffingwell*, *supra*.

In the case of *Johnson vs. Chicago & Pacific Elevator Company* (119 U. S., 388), heretofore cited by us as supporting our contention that this court is without jurisdiction, proceedings were instituted in a State court of Illinois, under a statute similar to that in the case at bar, which statute rendered vessels liable for injury done by them to property within the State and gave a lien upon the vessels. It also provided a means of summary attachment of the vessel by process to be issued out of the State court. The suit was by the owner of an elevator against the owners of a tug boat and the owners of a schooner, to recover for damages done to the elevator by the alleged negligence of the tug boat and schooner while the tug was towing the schooner in the Chicago River, resulting in the jib-boom of the schooner crashing through the wall of the warehouse or elevator and releasing therefrom a large quantity of corn which ran into the river. Upon filing of the complaint in the Illinois State court, a writ of attachment was sued out for the seizure of the vessels, and they were accordingly attached. Thereafter the owners executed a bond to the plaintiffs, conditioned upon payment of such damages as should be adjudged to be due, and on this bond the property was released to the owners, who thereafter sought to have the case dismissed for want of jurisdiction in the court to enforce the lien, it being urged that the cause of action was

one *in rem* on the tug and subject only to the jurisdiction of the District Court of the United States. This motion was denied by the trial court and the denial thereof affirmed by the appellate court, as well as by the Supreme Court of Illinois, from which latter decision an appeal was taken to the Federal Supreme Court, which held, as aforesaid, that the case was not one in admiralty, but within the jurisdiction of the State courts, notwithstanding the State statute gave a lien on the vessels. From the foregoing statement of that case it will be seen that the mode of procedure was substantially the same as in the case at bar. The court also held that—

“So far, therefore, as this suit is concerned, the action, in the shape in which it comes before this court, is a suit *in personam*, with an attachment as security, the attachment being based on a lien given by the State statute, and a bond having been, by act of the defendant, substituted for the thing attached.

* * * * *

“There being no lien on the tug, by the maritime law, for the injury on land inflicted in this case, the State could create such a lien therefor as it deemed expedient, and could enact reasonable rules for its enforcement, not amounting to a regulation of commerce. Liens under State statutes, enforceable by attachment, in suits *in personam*, are of every-day occurrence, and may even extend to liens on vessels when the proceedings to enforce them do not amount to admiralty proceedings *in rem*, or otherwise conflict with the Constitution of the United States. There is no more valid objection to the attachment proceeding to enforce the lien in a suit *in personam*, by holding the vessel by mesne process to be subjected to execution on the personal judgment when recovered, than there is in subjecting her to seizure on the execution. Both are incidents of a common-law remedy, which a court of common law is competent to give. *This disposes of*

the objection that the vessel being engaged in commerce among the States, and enrolled and licensed therefor, no lien on her could be enforced by attachment in the State court. The proceedings to enforce the lien, in this case, was not such a regulation of commerce among the States as to be invalid, because an interference with exclusive authority of Congress to regulate such commerce, any more than regulations by a State of the rates of wharfage for vessels, and of remedies to recover wharfage, not amounting to a duty of tonnage, are such an interference, because the vessels are engaged in interstate commerce." (The italics are ours.)

The case of Knapp, Stout & Company vs. McCaffrey (177 U. S., 638), not only reaffirmed the doctrine that causes of action similar to the one here under consideration brought under statutes kindred to those of the State of Washington, providing for liens on vessels because of injury done to persons or property, were properly within the jurisdiction of State courts and not of admiralty courts of the United States, but effectually recognized the competency of the States to enact such laws and to provide for their enforcement, and this decision furnishes distinct warrant for sustaining the validity of the State statutes herein attempted to be questioned.

The subject of the validity of liens on vessels created by State statutes was again considered and fully discussed by this court in the case of Iroquois Transportation Company vs. De Laney F. & I. Company (205 U. S., 354), which came here on appeal from the Supreme Court of the State of Michigan, and wherein the validity of the Michigan statutes giving a lien upon vessels for material used in the construction of same were drawn in question, as well as the jurisdiction of State courts over such subjects. The court adhered to its former holdings that the State statutes,

analogous to those involved in the present case, did not infringe the admiralty jurisdiction of the United States, and further held that decisions of the State courts on such matters related to local laws not subject to review in the Federal Supreme Court on writ of error to the State court. We quote the following from the opinion of the court because of its interesting and conclusive bearing on constitutional questions asserted by plaintiffs in error to be involved here, viz:

"It is urged that the attempt to enforce the lien on the vessel was while she was engaged in interstate commerce, and therefore proceedings against her were unlawful and void, in view of the exclusive control of this subject by Congress under the Constitution and laws of the United States. But it must be remembered that concerning contracts not maritime in their nature, the State has authority to make laws and enforce liens, and it is no valid objection that the enforcement of such laws may prevent or obstruct the prosecution of a voyage of an interstate character. The laws of the States enforcing attachment and execution in cases cognizable in State courts have been sustained and upheld. *Johnson vs. Chicago and Pacific Elevator Company* (119 U. S., 388-398). The State may pass laws enforcing the rights of its citizens which affect interstate commerce, but fall short of regulating such commerce in the sense in which the Constitution gives exclusive jurisdiction to Congress."

The effect of the decision cited must necessarily be, as we view it, that when the tort or contract for which a vessel is to be charged is outside the field of admiralty jurisdiction as in the case at bar, then the State Legislature has plenary power over the subject, as have also the State courts. Hence the claim that the effect of the statute in this case is to deprive plaintiffs of their property without due process

of law is frivolous, if such claim can be considered, for it was not properly before the State Supreme Court, or decided by it; and as it is settled that this court will not review the findings of facts by a State court on writ of error, and will not disturb its conclusions as to questions of local law, the assignments of error going to such matters cannot be considered and are without merit, and the defendant here is entitled to affirmance of the judgment below if this court entertains jurisdiction.

Respectfully submitted,
W. C. KEEGIN,
Attorney for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 418.

JOHN S. MARTIN ET AL., PLAINTIFFS IN ERROR,

vs.

A. J. WEST.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

This is an action brought by defendant in error in the Superior Court, Chehalis County, State of Washington, to enforce a lien against the Steamer "Norwood," for damages caused to a bridge across the Chehalis River, in that State, owned by defendant in error, through collision by that steamer with such bridge. After setting forth the facts relating to the ownership of the bridge and steamer, and alleging the details of such collision from the plaintiffs' viewpoint, the complaint avers that under the statutes of that State plaintiff has a lien upon the vessel and her appurtenances for such damage in the amount of \$15,000; that plaintiff is informed and believes that all of the defendants were non-residents of the State of Washing-

ton and absent therefrom except Martin, the master, and one Hulbert,

“and that said vessel is at the present time engaged
 “in loading a cargo of lumber at Aberdeen, Wash-
 “ington, preparatory to departing with the same for
 “some port in the State of California, and that said
 “defendants are preparing to take said vessel out of
 “the State of Washington and out of the jurisdic-
 “tion of this court and will do so unless restrained
 “by order of this court.”

(Pars. V, VI, R., p. 2.)

The complaint then avers existence of a proper case for the appointment of a receiver to take possession of the vessel, a temporary restraining order without notice, and prays for both, with order to show cause why such temporary restraining order should not be followed by like injunction *pendente lite* against removal of the vessel and for the appointment of such receiver, and upon final hearing for a decree adjudging the lien for such damages, and for sale of the vessel in satisfaction thereof, and for personal judgment against the defendants for any deficiency arising from such sale (R., 3).

The extracts from transcript of record, submitted with pending motion, omits that portion of the record showing the trial court's original action upon this complaint, but the original decision of the State Supreme Court sets forth (R., 25) that:

“The court appointed a temporary receiver to take
 “immediate charge of the vessel, and issued an order
 “that the defendants should show cause why a per-
 “manent receiver should not be appointed. Before
 “the time fixed for hearing upon the order to show
 “cause the defendants applied to the court for dis-
 “charge of the vessel from the receivership upon
 “their signing a bond to the plaintiff in the penal
 “sum of \$30,000, conditioned that they would pay
 “any judgment or claim which the plaintiff might
 “establish in said cause of action. Such bond was
 “given, it being expressly stated therein that one of

“its conditions is that the personal liability of the
 “principals and surety shall be substituted for any
 “security which the plaintiff may have against the
 “vessel. Thereupon the vessel was discharged from
 “the receivership and turned over to the defendants.”

The plaintiffs in error demurred to the jurisdiction of the court and to the sufficiency of the complaint, and such demurrer was overruled (R., 5, 6).

Answer was thereupon filed, saving all rights under the demurrer, admitting ownership of the “Norwood,” traversing the allegation of fault or responsibility of the vessel or the defendants for the collision and injury, and by way of distinct affirmative defense set up that the cause of action alleged as under the State statute, and its enforcement thereunder would severally be in violation of the defendants’ rights under—

1. The 8th section of Article I of the Federal Constitution, to wit:

“Congress shall have power: To regulate commerce with foreign nations and among the several
 “States,”

2. The Fourteenth Amendment, prohibiting enactment or enforcement of any law by a State abridging the privileges or immunities of citizens of the United States, or to deprive any person of life, liberty, or property without due process of law, or to deny to any persons within its jurisdiction the equal protection of the laws.

3. The provision of section 2, Article 3, to wit:

“The judicial power shall extend to all cases of
 “admiralty and maritime jurisdiction.”

4. Subdivision 8, of section 563, United States Revised Statutes, conferring upon the district courts of the United

States jurisdiction "of all civil causes of admiralty and maritime jurisdiction."

The cause was tried by the court (jury being waived), resulting in judgment for \$13,751.89 and costs against the plaintiffs in error. Findings of fact and conclusions of law were duly made (R., 18, 20).

On appeal the Supreme Court of Washington first sustained the rights of the defendants thus originally specifically set up and claimed, and held the cause of action cognizable only in the Federal courts, because the case fell "within admiralty jurisdiction," and thereon reversed the judgment (R., 24, 32).

On rehearing, and upon the authority of *Cleveland Terminal Valley R. Co. v. Cleveland Steamship Co.*, 208 U. S., 316, and *The Troy*, 208 U. S., 321, ruled in this court, after the original decision of the State Supreme Court, that court reversed its former decision, sustained the jurisdiction of the State court, and affirmed its judgment (R., 32, 35).

Thereupon this writ of error was sued out.

ARGUMENT.

THE MOTION TO DISMISS.

It is perfectly plain that in the original answer of these plaintiffs in error in the trial court, they clearly and in terms "specially claimed" a "title, right, privilege or immunity" under the Constitution and Statutes of the United States, and as clearly the final decision of the State Supreme Court whereto this writ of error runs was "against the title, right, privilege or immunity specially set up or claimed." Thus within the very language and within the full meaning of section 709, United States Revised Statutes, providing for review in this court, this case clearly falls. There is hence no possible ground for the existence of the faintest

color to support the contention that the jurisdiction of this court is here lacking. No case can be found more certainly within the jurisdiction of this court than is demonstrated by this record in respect of the case at bar. The jurisdiction is complete.

In *Davis v. Corbin*, 113 U. S., 687, 689, the applicable rule was thus stated:

"The original rule allowing a motion to affirm to be united with a motion to dismiss was promulgated May 8, 1876, 91 U. S., VII, and in *Whitney v. Cook*, 99 U. S., 607, decided during the October term, 1878, it was ruled that the motion to affirm could not be entertained unless there appeared on the record at least some color of right to dismissal. This practice has been steadily adhered to ever since, and in our opinion prevents our entertaining a motion to affirm in this case."

In *Hinckley v. Morton*, 103 U. S., 764, the appeal was dismissed. In denying petition for rehearing, the court said (p. 765):

"Rule 6, par. 4, as amended Nov. 4, 1878, 97 U. S., VII, provides that there may be united with a motion to dismiss a writ of error or appeal, a motion to affirm, on the ground that, although the record may show that this court has jurisdiction, it is manifest the appeal or writ of error was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument. This is a modification of the rule as originally promulgated May 8, 1876, 91 U. S., VII, when it was confined to motions to dismiss writs of error to a State court. In *Whitney v. Cook* (99 U. S., 607), we held that to justify a motion to affirm under this rule there must be a motion to dismiss and at least some color of right to a dismissal."

We submit that it is manifest that the writ of error was not taken for delay only. Even if it be finally held that this

case is wholly ruled by the cases in 208 United States, *supra*, relied upon by the court below, the plaintiffs in error, as shown *supra*, specially claimed under both the interstate commerce provision and the Fourteenth Amendment of the Constitution. As will presently appear the vessel attached in the State court was enrolled and owned in California; was engaged in operating a regular line for the transportation of interstate commerce, and the serious question is presented whether property with such *situs* and so engaged is subject to the attachment sustained in this case.

As clearly the Federal questions presented on their mere statement *supra* cannot be said to be "frivolous" in any sense; *contra*, they directly involve, and in a most serious way, some of the most important powers lodged by the Constitution within the exclusive control of the National Government.

In sharp contrast with the situation developed by the record here, is the language of the court in *New Orleans Water Works Co. v. Louisiana*, 185 U. S., 336, 344:

"It has long been the holding of this court that in order to warrant the exercise of jurisdiction over the judgments of State courts there must be something more than a mere claim that a Federal question exists. There must, in addition to the simple setting up of the claim be some color therefor, or, in other words, the claim must be of such a character that its mere mention does not show it destitute of merit; there must be some fair ground for asserting its existence, and, in the absence thereof, a writ of error will be dismissed, although the claim of a Federal question was plainly set up."

In *Equitable Life Assurance Society v. Brown*, 187 U. S., 308, 311, after citing the rule as set forth in *New Orleans Water Works Co. v. Louisiana*, *supra*, it was said:

"Stated in another form, the doctrine thus declared is, that although in considering a motion to dismiss it be found that a question adequate abstractly con-

"sidered to confer jurisdiction was raised, if it likewise appear that such question is wholly formal, is so absolutely devoid of merit as to be frivolous, or has been so explicitly foreclosed by a decision or decisions of this court as to leave no room for real controversy, the motion to dismiss will prevail."

It is clear from the record that the questions here presented are not "wholly formal" nor in any sense "frivolous," and hence the remaining inquiry is solely whether such questions presented on this record have been so explicitly foreclosed by the decisions of this court "as to leave no room for real controversy." And this leads to consideration of the

MOTION TO AFFIRM.

In the answer (par. VIII, R., 8) it is averred that the defendants are and were citizens and residents of the State of California, and

"Third. That during all the times herein mentioned and at the present time the steamer Norwood has been and is an ocean-going vessel registered at San Francisco in the State of California under the navigation laws of the United States, with the name 'Norwood,' painted on her bow and stern, and employed by her owners upon the Pacific coast between the city of San Francisco in the State of California and points in the State of Washington and particular points on Gray's Harbor in the said last named State, as a common carrier for hire."

These averments are not denied in the plaintiff's reply (R., 14).

The second finding of the trial court is that the defendants, as "owners of the steamer 'Norwood,' were engaged in operating said steamer on the said Chehalis River, said steamer being making regular runs between Gray's Harbor, Washington, and San Francisco, California * * *"

(R., 10).

The vessel was, therefore, *foreign* to the State of Washington both in registration and ownership, and was engaged in interstate commerce at the time of the attachment.

The controlling distinction as to *situs* in respect of liability is fully discussed in the case of *The Glide* (167 U. S., 606-610), with a review of the prior decisions of this court. Reversing the court below, this court therein held that the enforcement *in rem* of a lien upon a vessel, created by the statute of a State for repairs and supplies *in her home port*, is exclusively within the admiralty jurisdiction of the courts of the United States. Among many other cases therein cited is *The General Smith* (4 Wheat., 438, 443), wherefrom the opinion in *The Glide*, *supra*, quotes (*inter alia*) :

“Where repairs have been made, or necessities have been furnished to a foreign ship, or to a ship in a port of the State to which she does not belong, the general maritime law, following the civil law, gives the party a lien on the ship itself for his security; and he may well maintain a suit *in rem* in the admiralty to enforce his right. But in respect to repairs and necessities in the port or State to which the ship belongs, the case is governed altogether by the municipal law of that State; and no lien is implied, unless it is recognized by that law.”

Here stands clear recognition of the distinction between *status* of foreign ships, and those “in a port of a State to which she does not belong,” on the one hand, and those “in the port or State to which the ship belongs.” In respect of the *latter* civil action lies. The same may be said of torts civilly cognizable under State law. If the vessel be in the port of a State to which she belongs, the municipal law of that State applies. If she be a foreign ship or “a ship in a port of a State to which she does not belong” (as here), it would logically follow that the municipal law of the State does *not* apply. Hence the lien here alleged under the State law (Ballinger’s Code, section 5953) would not apply, because the ship was neither registered at any port of the State of

Washington, nor was she owned in whole or in part by a citizen or citizens of that State. We submit it is clear that civil liability, whether in contract or in tort, must be measured by the same rule, and that jurisdiction does or does not attach under State law and in State courts accordingly as the vessel may or may not be "in the port or State to which the ship belongs." In other words, liability in tort does not obtain against a foreign vessel where such vessel would not be liable in contract under the *same* State law. Otherwise there would be clear inequality, with resulting violation of the Fourteenth Amendment to the Federal Constitution and clear denial of the equal protection of the laws which that amendment enjoins. That is the ground on which error is assigned under the Fourteenth Amendment (Assignment IV, R., 42). Certainly suits of the one class—*i. e.*, in contract, could not be made cognizable in one jurisdiction and suits of the other class—*i. e.*, in tort, in another jurisdiction, in respect of the same vessel registered in the port of *another* State, without clear discrimination and resulting repugnancy to the provisions and prohibitions of the Fourteenth Amendment.

The opinion of the State Supreme Court on rehearing is largely based upon the decisions of this court in *Cleveland Terminal & Valley R. Co. v. Cleveland Steamship Co.* (208 U. S., 316) and *The Troy* (208 U. S., 321). In those cases it was held that the remedy for injuries committed by a vessel to land structures (including bridges) was not in admiralty, and, as those cases were brought in the United States District Court in admiralty, dismissal followed. But this ground alone is not, we submit, conclusive in the case at bar. Examining the records in the cited cases, we fail to find any averment as to where the vessels there involved were registered, and the question here presented is not raised therein. It was simply held that admiralty did not have exclusive jurisdiction because the tort or injury committed was not in character or locality within the admiralty jurisdiction.

In the case of *The Winnebago* (205 U. S., 354) the record

thereof contains the registration papers of that vessel (R., p. 88 therein). Therefrom it appeared that the vessel was enrolled at the port of Huron, Michigan, and the suit under review was brought in the Circuit Court of Wayne County, Michigan. It involved a lien for construction of the vessel built in Michigan and launched and finished in Michigan waters, at St. Clair and the St. Clair River in Michigan. Hence the question presented in this case was not involved, to wit, the status or locality of the vessel—her home port—and consequently was not ruled.

So also in *Knapp, Stout & Co. v. McCaffrey* (177 U. S., 638), cited by the learned court below, there is no pleading nor evidence we can find in the record of that case showing where the tug-boat there involved was registered, and the question here presented was apparently not discussed. Certainly it was not expressly ruled.

Furthermore, the complaint herein (par. VI, R. 2) avers—

“that said vessel is at the present time engaged in loading a cargo of lumber at Aberdeen, Washington, preparatory to departing with the same for some port in California.” * * *

The answer (par. VI, R., 7) in terms admits this allegation of the complaint.

Here, then, was a vehicle of interstate commerce actually and actively engaged in such commerce. The lumber so shipped had in fact entered into interstate commerce under the definition of that term given by this court in *Coe v. Errol*, 116 U. S., 517, 525, where, speaking directly to this point, the opinion holds:

“There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose,

“in which they commence their final movement for
“transportation from the State of their origin to that
“of their destination.”

That moment is necessarily when the goods are loaded into or upon the vehicle which moves them to their destination.

While it has been ruled in this court that a vessel employed in interstate commerce may be subject to lien or attachment under State statute, there is nothing in the recitals of those decisions which rule that where the vessel is at the moment of attachment actually and physically so engaged the statutory lien may be enforced. Serious consequences may readily flow from an attachment sought to be exercised at such juncture. The fact here expressly found (R., 19) is that the vessel was so employed in “making regular runs between Gray’s Harbor, Washington, and San Francisco, California.” The allegation of the complaint and admission of the answer is that she was loaded with interstate shipment at the moment of attachment. Attachment under lien is not a common-law remedy, but of statutory origin. If existent under the circumstances set forth in this record it clearly is an interference with interstate commerce, because it takes therefrom the vehicle or instrument in which such commerce is at the very moment in actual transit. It is true this court has ruled that a vessel employed in interstate commerce and enrolled and licensed therefor is subject to attachment in the State courts (*Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S., 388), but this court has *not* said that where the vessel is at the moment loaded with interstate shipment in actual transit such attachment can intervene to instantly *stop* the voyage, even though the vessel were under way but within the territorial waters of the State. That may be the logical result of the former ruling but certainly this court has not so explicitly ruled thereon “as to leave no room for real controversy,” or further legitimate discussion.

Indeed, examination of the statement of facts given in the report of *Johnson v. Chicago, &c., Elevator Company, supra*, reveals the fact (p. 389) that the petition on which the suit was based set forth that the plaintiff was an Illinois corporation, and the proprietor of a warehouse situate near the bank of the Chicago river. "That on that day, Jacob Johnson, a resident of Chicago, in said county, was the owner of the tug-boat *Parker*, of above five tons burthen, used and intended to be used in navigating the waters and the canals of Illinois, and having its home port in Illinois."

Again, page 391, the statement is that—

"The statute under which the proceedings in this suit took place is c. 12 of the Revised Statutes of Illinois, entitled 'Attachment of Water Craft,' which went into effect July 1, 1874. Rev. Stat. Ill., 1881, p. 159. The act, sec. 1, gives a lien on all water craft of above five tons burthen, 'used or intended to be used in navigating the waters or canals of this State, or used in trade and commerce between ports and places within this State, or having their home port in this State.'"

On that state of facts, this court ruled the lien law of the State applicable in respect of the tort committed by the tug upon the warehouse of the plaintiff company.

In the case of the "*Chusan*," 2 Story, 455, Federal Cases, vol. 5, No. 2717, Mr. Justice Story said:

"If the power to regulate foreign and interstate commerce be, as I conceive it to be, exclusive in Congress, all State interference therewith is unconstitutional and void. Congress, having power to regulate the whole subject, regulates it as much by what it leaves without any positive regulations, as by what it expressly provides for. The will of Congress is equally expressed in both cases. It cannot be that a State has a right to step in, and by way of compliment, fill up by its own legislation, what is not actually occupied by that of Congress. Such was the doctrine maintained by the

"Supreme Court in *Houston v. Moore*, 5 Wheat. (18
 "U. S.), 1, 21, 22; *Gibbons v. Ogden*, 9 Wheat. (22
 "U. S.), 1, 196-222, and *Holmes v. Jennison*, 14 Pet.
 "(39 U. S.), 540, 569, 574-579."

The field of admiralty jurisdiction peculiarly presents questions involving technical discussion and nice distinctions. These questions are as serious as they are important in every practical phase. The ultimate of all judicial discussion in respect of admiralty jurisdiction, procedure and remedies has certainly not yet been reached. The reports of this court abound with decisions on the subject. They have often been misinterpreted and misapplied by other courts because of variant conditions of fact which sometimes confused clear judgment and often created sound distinctions in respect of applicable principles. Here, for illustration, we find a case of prime importance upon the question whether a vehicle of interstate commerce actually loaded with interstate freight, whose voyage is interrupted after in law the journey has commenced by loading of the interstate commodity into the vessel and actual delivery thereof to the ship as a common carrier for hire, can be thus seized. Assuming no other available mode of transportation and interstate commerce is instantly and indefinitely blocked by the operation of a lien law of the State. Certainly there has been no express statutory authority for such result to be found in the Federal enactments.

In the case of *The Roanoke*, 189 U. S., 185, the very statute of the State of Washington here invoked to sustain this proceeding was declared unconstitutional, because giving a lien thereunder *in rem* against a foreign vessel for supplies furnished or repairs made in a port of that State. In the course of that opinion it was said (pp. 197, 198):

"In *Hall v. De Cuir*, 95 U. S., 485, 498, it was said that—

"Inasmuch as interstate commerce is regulated
 "very largely by congressional legislation, it fol-
 "lowed that such legislation must supersede all State

"legislation upon the same subject, and, by neces-
 "sary implication, prohibit it, except in cases where
 "the legislation of Congress manifests an intention
 "to leave some particular matter to be regulated by
 "the several States, as, for instance, in the case of
 "pilotage. *Cooley v. Board of Wardens*, 12 How.,
 "299. Upon this principle it was held that a law of
 "Louisiana excluding colored passengers from the
 "cabin set apart for the use of whites during the
 "passage of steamboats down the Mississippi was a
 "regulation of interstate commerce, and therefore
 "unconstitutional. To the same effect is *Sinnott v.*
 "*Davenport*, 22 How., 227. In the subsequent cases
 "of *Louisville, &c., Railway v. Mississippi*, 133 U. S.,
 "587, and *Plessy v. Ferguson*, 163 U. S., 537 State
 "laws requiring separate railway carriages for the
 "white and colored races were sustained upon the
 "ground that they applied only between places in
 "the same State."

Clearly, there can be no difference between passenger
 transportation and freight transportation, where both have
 actually begun the voyage by embarking in the one case
 or being loaded in the other upon the *same* vessel. In
 each instance the interstate *status* has begun, though the
 vessel has not cast off from the shore. The business has
 become interstate and is clearly subject only to the regula-
 tion of Congress, *except* where by statute Congress has ex-
 pressly or impliedly recognized the right of the State to
 enact laws regulating the subjects. We are unable to find
 that Congress has relinquished such control in cases like
 that at bar. As certainly the interstate commerce relation
 has begun by embarking, loading, and once begun, we
 submit, it cannot be suspended or wholly prohibited under
 authority of State law, which undertakes to destroy the con-
 tinuity of transportation by seizure of the instrument of
 interstate commerce when engaged in the very act of per-
 forming the interstate commerce service.

The rule applied by the court below would equally apply
 to a ship of a foreign flag committing a tort of the nature

here involved in the territorial waters of the State. And although such foreign vessel were loaded with freight destined beyond seas, the same effect could follow and enormous loss and delay suffered by enforcement through attachment and sale of the vessel under judgment obtained in a State court or under State law. The admiralty law is the law of the civilized world; State law would be unknown to the owners or master of the vessel thus situate. The distinction suggested between a proceeding *in rem* against the vessel and personal action against the master and owners, with attachment of the vessel, whereby the former is forbidden in State courts and the latter recognized, is in practical effect a distinction without a difference. The practical result is to subject the foreign or interstate commerce with which the vehicle of transportation is loaded to the burden of State law wholly unknown to the foreign carrier, and equally burdensome in effect upon the interstate commerce in which such vehicle is at the moment of such attachment engaged. Unless, therefore, Congress has in clear and explicit manner transferred jurisdiction in such cases to the States, State law and State tribunals cannot invade the domain of interstate and foreign commerce by such drastic enactments. Property of the State, registered, operated, or owned within the State, may be held thus responsible, but with all respect, we submit, that to the case presented by this record State enactment should not extend.

Whilst the Supreme Court of Washington has held the statute of that State applicable to sustain the attachment of the vessel thereunder for the tort alleged, it by no means follows that such construction by that court can be accepted as binding in this court.

In construing the statute of the State of New York dealing with liens, Mr. Justice Story, in *The Chusan*, *supra*, further said:

"I ought to add, that I entertain not the slightest
 "doubt that that statute was never intended to be
 "applied to cases of foreign ships, or the repairs

“thereof, but was designed to be auxiliary to the
 “maritime law, and to give it an extended applica-
 “tion to domestic ships, from motives of public
 “policy and general convenience.”

In *Guffey v. Alaska & P. S. S. Co.*, 130 Fed. Rep., 271-278, the United States Circuit Court of Appeals for the Ninth Circuit, in considering the same statute of the State of Washington, aptly said:

“It is unnecessary to cite authorities to the point
 “that such a lien law is to be strictly construed. It
 “is true that in some contracts and in some relations,
 “the charterer, by demise, is to be deemed the owner
 “*pro hac vice*. But in construing a statute which
 “specifies only that the lien may be created by the
 “owner, master, agent, or consignee, we know of no
 “rule or principle of construction which authorizes
 “us to read into it the word ‘charterer.’”

And the rule that a statute is to be so construed, if possible, as to leave it a valid enactment, is too well settled to require discussion or citation of authorities.

Review of the legislative history of this statute of Washington will clearly demonstrate that it necessarily applies only to domestic vessels of that State. The original statute was passed November 8, 1877, while Washington was a Territory. The act was divided into five chapters, the first being as to liens on steamers, vessels and boats; the second, logs, lumber, etc.; the third, the liens of mechanics; fourth, liens for salaries, and fifth, miscellaneous.

Chapter 1 thereof is as follows:

“SECTION 1. That all steamers, vessels, and boats,
 “their tackle, apparel, and furniture, are liable:

“First, for services rendered on board at the re-
 “quest of, or on contract with their respective
 “owners, masters, agents, or consignees;

“Second, for supplies furnished in this Territory
 “for their use, at the request, of their respective
 “owners, masters, agents, or consignee:

“Third, for work done, or material furnished in this Territory for their construction, repair, or equipment;

“Fourth, for their wharfage and anchorage within this Territory;

“Fifth, for non-performance or mal-performance of any contract for the transportation of persons or property between places within this Territory, or to or from places within this Territory, made by their respective owners, masters, agents, or consignees;

“Sixth, for injuries committed by them to persons or property within this Territory or while transporting such persons or property to or from this Territory.

“Demands for these several causes constitute liens upon all steamers, vessels, and boats; and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued.

“SEC. 2. Such liens may be enforced by suit in admiralty *in rem* and the law regulating proceedings in admiralty shall govern in all such suits.”

Secs. 5953 and 5954, Ballinger's Code.

The first section of this statute has been amended in some particulars, but these amendments do not affect the questions here involved.

It is apparent from the above statute that, with one possible exception, it relates wholly to maritime contracts and causes of action growing out of such contracts. The possible exception referred to arises out of the construction placed by the court below in its latest opinion in this case, on the sixth subdivision.

If foreign vessels were within the purview of the legislature when it passed this act, it is clear that the first five subdivisions are entirely superfluous, as applied thereto, for the reason that under the general admiralty law a lien for these several causes already existed of which the courts of ad-

miralty had exclusive jurisdiction. It would not be within the power of the legislature of the State to take from or add to such liens. This question was considered by this court in an appeal from the State Supreme Court in a suit involving this identical statute, and it was there held that it was not competent for a State to impose such liens, and that as far as a foreign vessel was concerned, such statute was unconstitutional and void.

The Roanoke, 189 U. S., 185, and authorities cited.

It is common knowledge that the maritime law does not give liens against domestic vessels for supplies, materials, repairs, services, etc., furnished them in their home ports.

Norton v. Switzer, 93 U. S., 385.

The Edith, 94 U. S., 518.

Peyroux v. Howard, 7 Pet., 324.

The Belfast, 7 Wall., 624.

The Lottawanna, 20 Wall., 201.

In the absence of a statute, no maritime lien exists in favor of a master for services.

Norton v. Switzer, *supra*.

Not even for maritime wages.

The Orleans v. Phœbus, 11 Pet., 175.

Manifestly the intention of the legislature of 1877 was to create a maritime lien where, without the statute, none would have existed. That is to say, under this statute a lien would exist against a domestic vessel for supplies, material, repairs, services, etc., furnished her in her home port. The master would have a lien for his wages. There would be a lien for wharfage and anchorage; for non-performance or mal-performance of a contract; for none of which, under the maritime law, is there a lien against domestic vessels.

Manifestly the five subdivisions of this act *supra* could

not be held to apply to foreign vessels, and hence it must be presumed that the legislature did not intend to act beyond the scope of its powers, and that it intended the statute to operate only upon domestic vessels. If otherwise, the lien sought to be given by the statute would be *pro tanto* void and the act unconstitutional. It is hence but natural and just construction of language to hold the sixth class above enumerated, providing lien for torts, as one of the same species and limited in application to domestic vessels. And this is made all the more clear by the concluding language of section 1, which makes the demands "for these several causes"—*i. e.*, 1 to 6, inclusive—constitute liens upon all steamers, vessels, and boats, their tackle, etc., with prescribed order of priority and with "preference over all other demands." But it is obvious that the concluding language of that section, continuing such liens in force for the period of three years from the time the cause of action accrued, could not have priority over all other demands in respect of a foreign vessel without patent conflict with admiralty law and jurisdiction. Construing this section, then, in the light of existing law and settled precedent, it is obvious that, in all its parts, the lien therein prescribed had reference alone to domestic and not to foreign vessels.

Furthermore, section 2 of the original act limited enforcement of the lien "by suit in admiralty *in rem*." This clearly contemplated that the statute was limited, in respect of cases falling thereunder, to the remedy provided by admiralty procedure.

Now, in 1881, the second section of this act of 1877 was amended to read thus:

"Such liens may be enforced in all cases of maritime contracts or service by a suit in admiralty *in rem*, and the law regulating proceedings in admiralty shall govern in all such cases; and in all cases of contracts or services not maritime, by a civil action in any district court of this Territory."

Ballinger's Code, section 5954.

The words in section 5954, "such liens," unquestionably refer to those enumerated in the preceding section, 5953, but it is plain that the words "and in all cases of contracts or services not maritime, by a civil action in any district court of this Territory," do not cover cases of tort. The language is "of contracts or services not maritime." Torts do not fall under the head of contract or service, and, as the statute conferring the remedy by lien must be strictly construed, and not extended beyond its plain language, it is obvious the State law, if it thus attempts to create a lien for a tort against a foreign vessel, presents a case of juridical cognizance here, upon the plain inquiry whether State law may create such a lien upon foreign vessels under the circumstances shown by this record. It is hence obvious that the construction of the State statute by the Supreme Court of Washington is not binding upon this court, when, as we earnestly contend, the construction given thereto by that learned court invades the field of Federal jurisdiction.

Applying the State law to domestic vessels only, leaves the State statute standing without such conflict. Applying the State law to foreign vessels immediately creates such conflict and resulting invalidity. For if this statute can be construed to include a lien against a foreign vessel for a non-maritime tort, it is by virtue of the words "all steamers," etc., found therein. But upon exactly the same reasoning it would include liens upon foreign vessels for maritime torts and contracts which are regulated exclusively by the admiralty. It prescribes, in regard to these supposed liens, its own rules of priority, and those that have preference over all other demands, and exist without any record being made thereof for three years, wholly ignoring the doctrine of admiralty in regard to laches and stale demands.

"The constitutional validity of a law is to be tested,
 "not by what has been done under it, but what may
 "by its authority be done."

Stewart v. Palmer, 74 N. Y., 183, 188.

This language was quoted and approved in *Montana Company v. St. Louis Mining, etc., Company*, 152 U. S., 160, 168.

Furthermore, while called a suit *in personam*, the present action is in effect a proceeding *in rem*. This is apparent from the complaint.

The complaint avers that the steamer caused the damage alleged and asserts a lien against her (pars. III and V, R., 2). The prayer is (R., 3) for temporary and permanent receiver "to take and hold possession of said vessel" *pendente lite*; that plaintiff be adjudged to have a lien upon her for the amount of his damage and costs; that the vessel, etc.,

"be sold under the order and decree of this court, and
 "that the proceeds arising from such sale after deducting the costs and expenses thereof, be applied
 "as far as necessary to the satisfaction of the plaintiff's said lien and that the defendants be adjudged
 "to be personally liable to the plaintiff for the amount
 "of the plaintiff's said damages and costs and that
 "the plaintiff have personal judgment against the
 "defendants and each of them for the amount of any
 "deficiency remaining after said sale, * * *"

No judgment is prayed against the defendants except upon the contingency that there be a deficiency arising from the sale of the vessel and then only for the amount of such deficiency. The interest of the defendants in the vessel is not prayed to be sold; *contra*, and as in admiralty, decree is prayed against the vessel and for her sale, regardless of the title of the defendants and without regard to its measure. The vessel may have been mortgaged in her home port and such mortgage there alone recorded as required by the Federal registry laws. All interest of such mortgagees (if any) was prayed to be thus extinguished by such form of sale as *in rem*, and without notice in any form. In such character of property, possession would, of course, follow sale. All this was in legal effect prayed against the vessel and not limited to the interest of the defendants therein.

In *Johnson v. Chicago, &c., Elevator Co.*, 119 U. S., 388, and as appears from the recitals of the opinion (p. 397), "Attachment was made of 'all the right, title and interest' "of Johnson in and to the tug, * * *" while here the prayer was for attachment and sale of the vessel and not of defendants' interest therein, legal or equitable. Of course, preliminary attachment cannot obtain where execution under judgment cannot be levied. The whole point is fully and clearly stated and ruled in *Badlam v. Tucker*, 1 Pick. (Mass.), 389, 11 Am. Dec., 202, thus:

"A mere equitable interest cannot be taken and
 "sold on execution; for where there is no legal right
 "there is no legal remedy. This was settled on great
 "deliberation by the Court of King's Bench in the
 "case of *Scott v. Scholey*, 8 East, 467; and the rea-
 "sons there given are entirely satisfactory. The
 "judgment of the court in that case was sanctioned
 "by the Court of Common Pleas, in the case of
 "*Metcalf v. Scholey*, 2 B. & P. N. R., 461, and is
 "supported by all the authorities. It is only by
 "statute that equities, or rights to redeem, are sub-
 "ject to attachment by ordinary process, and no
 "statute has authorized the attachment of such in-
 "terest in personal property. A creditor can reach
 "such an interest in his debtor only by resorting to
 "a court of equity, where he may be let in to redeem
 "incumbrances, *Shirley v. Watts*, 3 Atk., 200; un-
 "less, perhaps, he may first remove the incumbrance,
 "and then lay an attachment on the property, as to
 "which, however, we give no opinion. But until
 "payment, or tender of payment, of the money due
 "to the mortgagee or pawnee of goods and chattels,
 "it is very clear that the creditor of the mortgagor
 "or pawner has no remedy against them by attach-
 "ment and execution."

Under Federal registry laws recordation of sale or mortgage of vessels is required at the home port of the vessel (U. S. Rev. Stats., Secs. 4192-4196). That recordation protects the title and the mortgage lien. It cannot be destroyed

or impaired by attempted sale of the vessel as such under decree of a court of another jurisdiction, except under bottomry lien. The very form and structure of the present action demonstrates that such attempt to attach and sell this vessel and pass full title and delivery of her to a purchaser thereunder, is in plain violation of the Federal registry laws. It seeks to ignore and destroy all valid pre-existing liens, for the State statute declares that the liens therein given shall "have preference over all other demands," a manifest impossibility in respect of foreign vessels and hence again demonstrating that the State statute can have lawful operation only in respect of domestic vessels alone.

In the final opinion of the Supreme Court below it was ruled that "the security of the bond becomes substituted for that of the released property, and any question as to the regularity of the attachment cannot afterwards be raised," citing *Bradley v. Ouffroy*, 37 Washington, 482.

But the settled rule in this court is directly to the contrary. In *Pacific National Bank v. Mixter*, 124 U. S., 721, certain attachments secured in a State court against the Pacific National Bank were held invalid, because expressly prohibited by the National Banking Act.

We quote in full the language of the opinion on this point (page 728):

"We are, therefore, of opinion that the attachments in all the suits were illegal and void, because issued without any authority of law. But it is insisted that notwithstanding this the bonds are valid and may be enforced.

"It is undoubtedly true that the sureties on a bond of this kind are estopped from setting up, as a defence to an action for a breach of its condition, any irregularities in the form of proceeding to obtain an attachment authorized by law which would warrant its discharge upon a proper application made therefor. As the purpose of the bond is to dissolve an attachment, its due execution implies a waiver both by the defendant and his sureties of

“all mere irregularities. So, too, it is no defence that the property attached did not belong to the defendant, or that it was exempt, or that the defendant has become bankrupt or is dead. In all such cases, where there was lawful authority for the attachment, the simple question is, whether the condition of the bond has been broken; that is to say, whether there has been a judgment in the action against the defendant for the payment of money which he has neglected for thirty days afterwards to make.

“In the present case, however, the question is whether the bond creates a liability when the attachment on which it is predicated was actually prohibited by law. In other words, whether an illegal and therefore a void attachment is sufficient to lay the foundation for a valid bond to secure its formal dissolution. The bond is a substitute for the attachment, although not affected by all the contingencies which might have discharged the attachment itself (*Carpenter v. Turrell*, 100 Mass., 450, 452; *Tapley v. Goodsell*, 122 Mass., 176, 182). Such being the case, it necessarily follows that if there was no authority in law for the attachment, there could be none for taking the bond. If the attachment itself is illegal and therefore void, so also must be the bond which takes its place. Objections can be made to an attachment issued on proper legal authority, which cannot be used as a defence to a bond taken under the statute for its dissolution; but if there can be no lawful attachment, there can be no valid bond for its dissolution. The case is to be considered as though there was no law whatever for the seizure of the property by attachment before judgment in any case. As the taking of the property under such circumstances would be unlawful, so also would be the act of the magistrate in accepting the bond.

“Neither is the bond binding as a common-law bond. If the attachment had been valid, and the bond taken had not been in all respects such as the statute had required, it could nevertheless have been enforced as a common-law bond, because it

"was executed for a good consideration, and the ob-
 "ject for which it was given had been accomplished.
 "But here the difficulty is that there was no lawful
 "attachment, and therefore no lawful authority for
 "taking any bond whatever. The bond is conse-
 "quently neither good under the statute nor at com-
 "mon law, because there is no sufficient foundation
 "to support it."

We submit this decision controls in the case at bar. The
 court below did not construe the special provision of a State
 statute upon this point, but was dealing with a question of
 general law. It hence cannot be said that a question thus
 ruled in the State court was broad enough to sustain the
 judgment without regard to any Federal question ruled
 therein. As appears from this record, this vessel was duly
 enrolled under the navigation laws of the United States.
 She was thereby protected from unlawful seizure, and if,
 even upon principles of general law, the attachment in ques-
 tion was invalid, then it is plain that the bond given to
 discharge such attachment was without effect, or, to use the
 language of this court in the case just cited, "the bond is
 "consequently neither good under the statute, nor at com-
 "mon law, because there is not sufficient foundation to sup-
 "port it."

In its original decision the Supreme Court of Washing-
 ton held (R., 31, 32):

"In any event, even if it shall be held that we are
 "in error in the foregoing interpretation of the scope
 "of Federal decisions, still there is another element
 "in this case which we think, within the technical
 "distinctions which have been made in the decisions
 "must bring the case within admiralty jurisdiction.
 "The complaint alleges that the appellants:
 "Negligently, carelessly and through failure to
 "exercise ordinary skill in the handling, manage-
 "ment and navigation of said vessel, ran said vessel
 "against the supporting piers of one of the spans of
 "plaintiff's said bridge and thereby, through the

“‘carelessness and negligence of the defendants,
 “‘struck, broke and injured the piers supporting the
 “‘plaintiff’s said bridge to such an extent that within
 “‘a few hours thereafter one of the spans of the plain-
 “‘tiff’s said bridge collapsed and fell into the waters
 “‘of the said Chehalis River and was broken up and
 “‘almost utterly destroyed.’

“It is manifest from the foregoing that at least a
 “substantial part of the resulting injury was con-
 “summated on the very surface of and in the water
 “itself. If the other facts discussed were not suffi-
 “cient of themselves to establish a maritime locality
 “for the resulting injury, certainly this additional
 “circumstance must complete the chain of facts
 “necessary to do so. If it be said that the argument
 “upon this point is technical, it must be said in reply
 “that very technical distinctions appear to have
 “necessarily formed a part of the history of the law
 “upon this subject.”

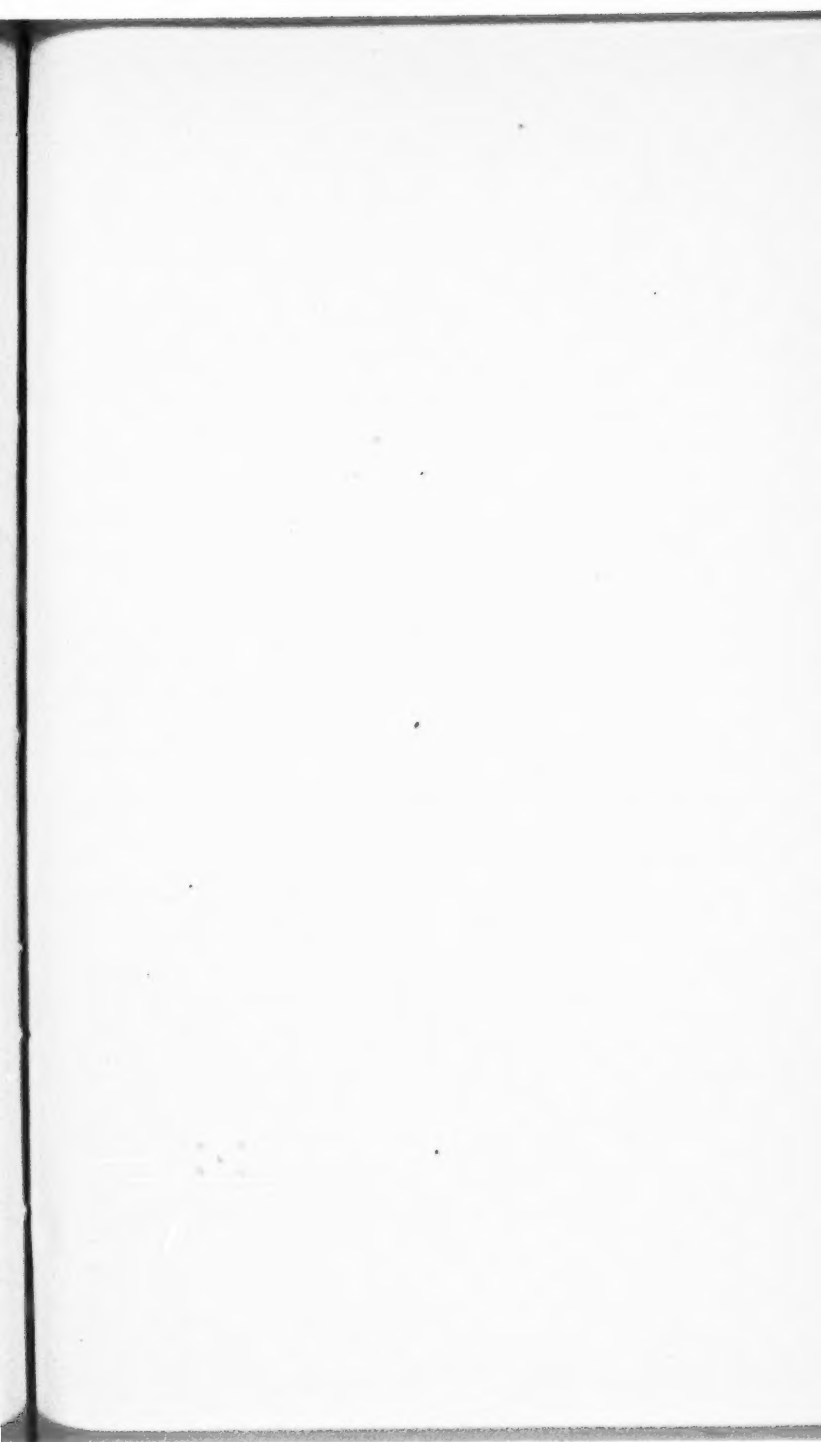
In its decision upon rehearing reversing its former decision that learned court makes no mention of this point or its former ruling thereon. Yet it is clear that *in fact* the locality of the tort alleged, and as an integral part thereof, was in the navigable waters of an interstate stream. It is an important part of the single tort alleged and an important element in the damage for which recovery was demanded and given. If considered *alone*, jurisdiction thereover existed in admiralty. We submit that jurisdiction therefore necessarily covered the *entire* case.

We submit the motions should be denied.

Respectfully submitted,

ALDIS B. BROWNE,
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 EVANS BROWNE,

Attorneys for Plaintiffs in Error. b



MARTIN v. WEST.

· ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.

No. 33. Argued November 2, 1911.—Decided December 4, 1911.

Whether a state statute providing remedies for damages to property within the State includes those to specified classes of property is for the state court to determine, and this court accepts the construction so given. *The Winnebago*, 205 U. S. 354.

Whether a tort be maritime or non-maritime must be determined by the character and locality of the injured thing at the time the tort was committed, and subsequent facts as to location furnish no criterion. *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S. 388.

Where a vessel by its own fault collides with and injures a bridge which is essentially a land structure and which is maintained and used as an aid to commerce on land, the tort is non-maritime.

The remedy for a non-maritime tort provided by the state statute

can be pursued in the state court against the vessel committing it, even though the statute gives a lien on the vessel.

When the interruption of interstate commerce by reason of the enforcement of a state statute otherwise constitutional is incidental only, it will not render the statute unconstitutional under the commerce clause of the Constitution.

A state statute which gives a lien upon all vessels, whether domestic or foreign and whether engaged in interstate or intrastate commerce, for injuries committed to persons and property within the State and providing that the lien for non-maritime torts be enforced in the state courts and which is not in conflict with any act of Congress, does not offend the commerce clause of the Constitution because it incidentally affects the use of a vessel engaged in interstate commerce; and so held as to §§ 5953 and 5954 of the Code of the State of Washington.

51 Washington, 85, affirmed.

THE facts, which involve the construction and constitutionality of certain statutes of the State of Washington, are stated in the opinion.

Mr. John Trumbull, with whom *Mr. Aldis B. Browne*, *Mr. Alex. Britton* and *Mr. Evans Browne* were on the brief, for plaintiffs in error:

The tort was maritime. Locality fixes the jurisdiction. *The Plymouth*, 3 Wall. 20.

The substance and consummation of the injury complained of must have taken place on the high seas, or navigable waters, in order that the admiralty should have jurisdiction. *The Plymouth*, 3 Wall. 20; *In re Phenix Ins. Co.*, 118 U. S. 610; *Johnson v. Chicago Elevator Co.*, 119 U. S. 388; *Cleveland &c. R. R. Co. v. Cleveland Steamship Co.*, 208 U. S. 316; *Duluth Superior Bridge Co. v. Steamer Troy*, 208 U. S. 321.

In all these cases the wrong or negligence occurred on navigable waters, but the injury and damage was consummated on the land. If, therefore, the wrong or negligence originates on the land, but the substance and consummation of the injury and damage—in other words,

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the cause of action—takes place upon the high seas or navigable waters, the admiralty must have exclusive jurisdiction. *Hermann v. Port Blakeley Mill Co.*, 69 Fed. Rep. 646.

The wrong complained of is the negligence in navigating the vessel, so that she ran against the supporting piers of one of the spans of the bridge. The substantial damage consisted in (some hours thereafter) the span falling into the river and being broken up and almost wholly destroyed. See *The City of Lincoln*, 25 Fed. Rep. 835, and *Riley v. Phila. & R. Ry. Co.*, 173 Fed. Rep. 839.

A State cannot by a lien law interrupt interstate and foreign commerce where no express statutory authority for such result can be found in the Federal enactments. *The Roanoke*, 189 U. S. 185; *Hall v. De Cuir*, 95 U. S. 485, 498.

Even if the Supreme Court of Washington has held the statute of that State applicable to sustain the attachment of the vessel thereunder for the tort alleged, such construction by that court cannot be accepted as binding in this court. *The Chusan*, 2 Story, 455; *Guffey v. Alaska & P. S. S. Co.*, 130 Fed. Rep. 271, 278.

A statute is to be so construed, if possible, as to leave it a valid enactment.

The state law either does not include the case of injury to a bridge by a foreign vessel engaged in interstate commerce or, if it does, it is clearly unconstitutional and void.

Where it is necessary to determine whether or not the rights secured by the Constitution or some law of the United States have been violated by a state statute or a municipal ordinance, this court will place its own independent construction upon such state law. *Jefferson Branch Bank v. Skelly*, 1 Black, 436; *Proprietors of Bridges v. Hoboken Land & Improvement Co.*, 1 Wall. 116; *Delmas v. Merchants' Mutual Ins. Co.*, 14 Wall. 661; *Butz v. Muscatine*, 8 Wall. 575; *Northwestern University v. Illinois*,

99 U. S. 309; *Yick Wo v. Hopkins*, 118 U. S. 356; *Huntington v. Attrill*, 146 U. S. 657; *Mobile & Ohio Ry. Co. v. Tennessee*, 153 U. S. 486; *Scott v. McNeal*, 154 U. S. 34; *Easton v. Iowa*, 188 U. S. 220.

The Washington statute (§§ 5953 and 5954) was not intended to include, and does not include in its terms, injuries to a fixed structure like a bridge; nor does it give a lien on a foreign vessel engaged in interstate commerce for such injuries.

Mr. W. C. Keegin for defendant in error submitted:

The case is one that was within the jurisdiction of the state court, and the admiralty court has no jurisdiction thereover. *The Savannah*, 21 Fed. Cases, No. 12,384; *City of Milwaukee v. Curtis*, 37 Fed. Rep. 705; *The John C. Sweeney*, 55 Fed. Rep. 540; *The Poughkeepsie*, 162 Fed. Rep. 494, aff'd *per curiam*, 212 U. S. 557; *The Plymouth*, 3 Wall. 20; *In re Phenix Ins. Co.*, 118 U. S. 610; *Johnson v. Chicago &c. Co.*, 119 U. S. 388; *Cleveland & R. Ry. Co. v. Cleveland Steamship Co.*, 208 U. S. 316; *Duluth Bridge Co. v. Steamer Troy*, 208 U. S. 322.

The statute sufficiently embraces this case. Its plain and simple language renders all steamers and vessels liable for injuries committed by them to persons or property within the State, or while transporting such persons or property to or from the State.

Provisions of state statutes like those here in question are valid and effective when they do not intrench upon the domain of the admiralty. *Johnson v. Chicago &c. Co.*, 119 U. S. 388; *Knapp v. McCaffrey*, 177 U. S. 638; *Iroquois Trans. Co. v. De Laney Co.*, 205 U. S. 355; *Davis v. Cleveland &c. Ry. Co.*, 217 U. S. 157; *Berwind-White v. Metropolitan S. S. Co.*, 166 Fed. Rep. 782, aff'd 173 Fed. Rep. 471. See also *Olsen v. Birch & Co.*, 133 California, 479; *The Victorian*, 24 Oregon, 121; *Scatcherd Lumber Co. v. Rike*, 113 Alabama, 559; *Globe Iron Works v. Steamer*,

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Opinion of the Court.

100 Michigan, 583; *Reynolds v. Nelson*, 116 Wisconsin, 483.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This case arose out of the collision, on May 7, 1906, of the steamer *Norwood*, owned and enrolled at San Francisco, with a supporting pier of a toll drawbridge between Aberdeen and South Aberdeen, in Chehalis County, Washington, over the Chehalis river, a navigable stream flowing into an arm of the Pacific Ocean. The pier stood upon the bed of the river, in navigable water, and the bridge was maintained and used as a connection between highways on either side of the stream, and not as an aid to navigation. The vessel was engaged in interstate commerce, was proceeding under her own motive power, and so struck the pier as to do serious injury to it and to cause one span of the bridge to collapse and fall into the river within a few hours thereafter. The cause of the collision was the negligent management of the vessel by her master and owners.

In a suit brought in the Superior Court of Chehalis County, by the owner of the bridge against the master and owners of the vessel, the former asserted and sought to enforce, under a statute of the State (Bal. Code, §§ 5953, 5954), a lien against the vessel for his damages so sustained; caused the vessel to be seized and detained by a temporary receiver, until released by the substitution of a bond by the master and owners in place of the vessel; and recovered a judgment, assessing his damages at \$13,751.89 and establishing the lien so asserted. The judgment was affirmed by the Supreme Court of the State, 51 Washington, 85, and its decision is now called in question upon various grounds, which, in view of our prior decisions, require but brief notice.

The pertinent portions of the state statute are as follows:

"SEC. 5953. All steamers, vessels, and boats, their tackle, apparel, and furniture, are liable,—

* * * * *

"6. For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state.

"Demands for these several causes constitute liens upon all steamers, vessels, and boats, and their tackle, apparel, and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued.

"SEC. 5954. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any district court of this territory."

1. It is objected that the statute does not include injuries to a fixed structure like a bridge, but only to persons or property while being transported, or, at most, to movable property susceptible of being transported; and does not include a foreign vessel, such as the *Norwood*, but only domestic vessels. But of this it is enough to say, the Supreme Court of the State has construed the statute otherwise, and the case is one in which we accept that construction. *The Winnebago*, 205 U. S. 354; *Smiley v. Kansas*, 196 U. S. 447; *Gatewood v. North Carolina*, 203 U. S. 531.

2. It next is insisted that the injury, on account of which the lien was asserted, was a maritime tort, and therefore the cause of action was within the exclusive admiralty jurisdiction of the courts of the United States; the argument being that, as the collapsing span of the bridge fell into the river, it was there that the substance and consummation of the wrong took place.

It may be that the damage ensuing from the collision was aggravated by the fact that the span fell into the stream and was subjected to the force of the current and submerged in the water, but, if that be so, it furnishes no criterion for determining whether the tort was maritime or non-maritime, because that question must be resolved according to the locality and character of the injured thing—the bridge with its spans and supporting piers—at the time of the collision. It was then that the causal influence of the negligent management of the vessel took effect injuriously and gave rise to a cause of action, and what followed is important only as bearing upon the extent of the injury and resulting liability. This is well illustrated in *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S. 388. There, the jib boom of a schooner, in the Chicago River, was negligently driven through the wall of a warehouse on adjacent land, whereby a large quantity of shelled corn, stored in the warehouse, ran out into the river and was lost. It was held that the substance and consummation of the wrong took place on land and that the tort was non-maritime, although the damage inflicted consisted chiefly of the loss of the corn. Other applications of the same principle are shown in *The Strabo*, 90 Fed. Rep. 110, and *The Haxby*, 95 Fed. Rep. 170.

As the bridge was essentially a land structure, maintained and used as an aid to commerce on land, its locality and character were such that the tort was non-maritime, *The Plymouth*, 3 Wall. 20; *The Blackheath*, 195 U. S. 361; *Cleveland Terminal and Valley Railroad Co. v. Cleveland Steamship Co.*, 208 U. S. 316; *The Troy*, 208 U. S. 321; and, consequently, it was admissible to pursue in the state court the remedy provided by the state statute, even though that law gave a lien on the vessel. *Johnson v. Chicago & Pacific Elevator Co.*, *supra*; *Knapp, Stout & Co. v. McCaffrey*, 177 U. S. 638; *The Winnebago*, *supra*.

3. Lastly, it is contended that the statute, as inter-

preted by the Supreme Court of the State, offends against the commerce clause of the Constitution of the United States, in that the creation and enforcement of such a lien against a foreign vessel engaged in interstate commerce is an unwarranted interference with such commerce.

We do not perceive in the statute, as interpreted and applied in the present case, any basis for this contention. As interpreted, the statute embraces all vessels, whether domestic or foreign and whether engaged in intrastate or interstate commerce, and therefore it cannot be said that its purpose is to regulate the latter. Its enforcement may occasionally and temporarily interrupt or prevent the use of a vessel in such commerce, as in this instance, but such an interference is incidental only, is almost inseparable from the compulsory enforcement of liabilities of the class in question, is not in conflict with any regulation of Congress, and does not in itself offend against the commerce clause of the Constitution. *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S. 388, 400; *The Winnebago*, 205 U. S. 354, 362; *Davis v. Cleveland, Cincinnati, Chicago & St. Louis Railway Co.*, 217 U. S. 157, 179.

We think the questions presented were rightly decided by the Supreme Court of the State, and its judgment is affirmed.

Affirmed.